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## DOCUMENTS.

*Accompanying the Presidents Message of the 22d of March.*

[CONCLUDED.]

### *PAPERS* RELATIVE TO *FRENCH AFFAIRS.*

*Extract from a letter to Mr. Monroe from General Armstrong.*

*Paris, 7th July*, 1807.

SIR,

"The accounts you have had of recent captures made by French privateers of American vessels under cover of the decree of November last, are not correct. At least if such captures have been made, I know nothing of them.—The only captures I have at any time heard of, were those made from Porto Ferrajo. They are by no means of recent date, and have all (I believe) been redressed by the council of prizes.—Two of these cases, to which I attended personally, received decisions equally favorable and prompt. Interest and damages were given to the plaintiffs, and I know not why decisions, equally favorable, should not have been given in the other cases. I have within a week been informed by Mr. Erving, that he had reason to believe that a French privateer, then in a port of Spain, had plundered American ships, either going to or coming from England, of dry goods, to the amount of 300 dollars. Before any thing could be done in Spain for the recovery of these goods, the ship went to sea, and professedly for the purpose of returning to the port of her armament. Beheving her to have arrived there, I put all the evidence I possessed before M. Decres, who closes his answer with the following assurance: "Your excellency may be assured that as far as it depends on me, the captains of these vessels, or their owners, shall obtain, if there is ground for it, a prompt and full reparation." I quote this to shew you, that their is no disposition in the ministers of this government to sanction, or protect those enterprizes upon our commerce. From the uses you may be able to make of the facts, and their relation to your question generally, I subjoin a brief exposition of the construction now given to the November decree.—It was, you know, admitted by both ministerial and judicial authorities, that this decree did not infract the provisions of the treaty of 1800, between the United States and France. Still it was contended that vessels (of the United States) coming from any port of Great Britain *since* the date of the edict, could not be admitted to entry in the ports of France. This rule, without some qualifications, was likely to become mischievous, and I accordingly obtained the following modifications of it, & hope to obtain a further modification, which will render it perfectly harmless. These changes took place as circumstances rose to produce them, for though the necessity for them was both foreseen and represented, it was only upon real, not upon hypothetical cases that the ministers of his majesty were willing to act.

1. Vessels leaving ports of the United States before a knowledge of the arret had been promulgated *there*, are not subject to the rule.

2. Vessels not coming *directly* from a British to a French port, are not subject to the rule.

3. The *cargoes* of vessels coming *directly* from a British to a French port and offered for entry, on proof that the touching of the ship in England, &c. was involuntary, are put in depot or sequestration, until his majesty shall have decided on the sufficiency of the proof offered; or they are at once given up to the consignees on their giving security to abide the decision which shall be ultimately taken by the emperor in their respective cases. The vessels can go out freely, and without impediment of any kind. The former rule of which this is an amelioration was, that *ships* as well as *cargoes*, coming under the description, should be sequestered, &c.—The further alteration which I have asked is, the establishment of some principle which shall regulate the kind and degree of proof required with respect to the alledged application of a force majeure, and my own opinion is, that this may best be found in the greater or less correspondence which shall exist between the cargo when shipped in America, and when arrived here. If the correspondence be complete, the evidence ought to be considered as complete also, *that they were not in Great Britain for the purposes of commerce*, and not being there for *these* purposes, the inference is fair, that their going there at all was involuntary. This is a rule the ministers will consent to, whether his majesty will do so also, will be known in a few days. He is expected here about the beginning of August."

*Paris, September* 18, 1807.

I have submitted, sir, to his majesty the emperor and king, the doubts of his excellency the minister of marine and colonies, on the extent of some of the provisions of the imperial decree of November 21st, 1806, which has declared the British islands in a state of blockade; the following are the intentions of his majesty on the point in question.

1. Can armed vessels, under the imperial decree of the 21st of November last, seize in neutral vessels, either English property, or merchandize proceeding from the manufactures of the English territories?

His majesty notified me, that since he had not thought proper to express any exception in his decree, there is no ground to make any in the execution, with respect to any thing whatever.

2. His majesty has not decided the question whether French armed vessels may possess themselves of neutral vessels going to or from England, although they have no English merchandize on on board.

3. On the question whether French armed vessels are subject to the deduction ordered by the sixth article of the decree of November 21, his majesty has declared that the provision of that article was not susceptible of any restriction; that is to say, that the deduction must take effect on the proceeds of all confiscations of merchandize and property, which have been, or may be, pronounced in execution of the decree, without regard to the place of seizure or character of the captors.

You will be so good, sir, as to notify these decisions to the council of prizes, to have them entered in the registers, and to acknowledge the receipt of my letter.

Accept, &c. &c. the Grand Judge, Minister of Justice.

(Signed) REGINIER.

Procureur General Imperial of the Council of Prizes.

*Paris, 24 September*, 1807.

SIR—I have this moment learned, that a new and extended construction, highly injurious to the commerce of the United States, was about to be given to the imperial decree of the 21st of November last. It is therefore incumbent upon me to ask from your excellency an explanation of his majesty's views in relation to this subject, and particularly whether it be his majesty's intention, in any degree to infrac the obligations of the treaty now subsisting between the United States and the French empire?

I pray your excellency, &. &.

(Signed) JOHN ARMSTRONG.

His excellency the minister of foreign relations.

*Fontainebleau, Oct. 7*, 1807.

SIR—you did me the honor on the 24th of Sept. to request me to send you some explanations as to the execution of the decree of blockade of the British islands, as to vessels of the United States.

The provisions of all the regulations and treaties relative to a state of blockade, have appeared applicable to the existing circumstances, and it results from the explanations which have been addressed to me, by the imperial procureur general of the council of prizes, that his majesty has considered every neutral vessel, going from English ports, with cargoes of English merchandise of English origin, as lawfully seizable by French armed vessels.

The decree of blockade has been now issued eleven months, the principal powers of Europe, far from protesting against its provisions, have adopted them; they have perceived that its execution must be complete, to render it more effectual, and it has seemed easy to reconcile these measures with the observance of treaties, especially at a time when the infractions, by England, of the rights of all maritime powers render their interest common, and tend to unite them in support of the same cause.

Accept, &c. &c.

(Signed) CHAMPAGNY.

*H. E. General Armstrong, Min. Plen. of the U. States.*

*Paris, Nov.* 1807.

SIR—It was not till yesterday that I received from Mr. Skipwith a copy of the decree of the council of prizes, in the case of the Horizon. This is the first unfriendly decision of that body under the decree of the 21st of Nov. 1806. In this case and on the petition of the defendant, the court has recommended the restoration of the *whole* cargo. I did not however think proper to join in asking as a favor, what I believed myself intitled to as a right. I subjoin a copy of my note to the minister of foreign affairs.

And am sir, your most obedient humble servant.

(Signed) JOHN ARMSTRONG.

*Mr. Madison, &c.*

*Paris, Nov. 12th*, 1807.

Sir—The document to which these observations are prefixed, will inform your excellency that an American ship trading under the protection of the laws of nations and of particular treaties, and suffering shipwreck on the coast of France, has recently been seized by his majesty's officers, and adjudged by his council of prizes as follows viz.

"Our council puts at liberty the American vessel, the Horizon, shipwrecked the 30th of May last, near Morlaix, and consequently order, that the amount of the sale legally made of the wreck of the said vessel, together with the merchandize of the cargo, which according to an estimate made in presence of the overseers of the administrations of the marine and custom house, shall be acknowledged not to proceed either from English manufartures or territory, shall be restored to captain MacClure without deducting any other expences but those relative to the sale."

"And with regard to the other merchandize of the cargo which from the result of the said estimate shall be acknowledged to come from manufactures or from English territory by virtue of the 5th article of the decree of the 21st Nov. 1806, they shall be confiscated for the use of the state, the whole to be sold by the forms prescribed in the regulations; and the application of the product to be made in conformity to the arrangements of the said decree, deduction being made for the expense of saving the goods, and that of the support of the crew, until the day that the captain shall receive the notification of the present decision."

The reasons upon which this decision is founded, are at once so new and so alarming to the present friendly relation of the two powers, that I cannot but discuss them with a freedom in some degree proportioned to my sense of their novelty and importance.

"Considering" says the council—"That the neutrality of the ship and cargo were sufficiently established, the whole ought to be restored, (agreeably to the provisions of the convention of the 30th of September, 1800) provided no merchandise of English origin had been found in her, and of course that she had not been brought within the limits of the imperial decree of the 21st of Nov. 1806."

Here is an open and unqualified admission that the ship was found within the rules prescribed by the convention of 1800, that according to these rules, her cargo and herself ought to have been restored, and that such would have been the fact but for the operaton of the decree of the 21st of November, 1806.

In the letter your excellency did me the honor to write to me on the 7th of October last, you thought it "easy to reconcile the obligations of this decree, with the preservation of those arising from treaties." It was not for me to examine the means by which this reconciliation was to be effected. They no doubt fully existed, and yet exist, in his Majesty's good pleasure, and taking for granted this fact, I saw in the opinion nothing but proofs of a friendly disposition, and pledges that this was not to be either wantonly destroyed or diminished.—How inauspicious however to its authority and the consolation derived from it, is this recent act of the council of prizes? An act which explicidly acknowledges the opposite characters and conflicting injunctions of these two instruments, and which of course draws after it considerations the most serious to the government of the United States.

The 2d reason of the Council is "that the decree declaring British merchandize good prize, had principally in view captures made on the high seas, but that the question whether shipwrecked goods ought to be restored or confiscated having always been judged under the 14th article of the regulation of the 25th of July, 1778. And according to their character (that might have rendered lawful, or have even commanded their seizure at sea) there is no room to introduce in this case any new distinction which, however philanthropic it may appear, has not as yet been adopted as a rule by any maritime nation."

The doctrine resisted in this passage, and which inculcates the duty of extending protection to the unfortunate is not new to his majesty's council of prizes. They have themselves consecrated it by their decision of the 5th of March, 1800. By that decision they restored an enemy's ship on the *single reason*, that she had been *compelled to enter a French port by stress of weather*. "I should equally fail" says the attorney general, "in respect to myself and the council, before whom I have the honor to represent the government, *were I not to maintain a principle, consecrated by our laws and by those of all nations.* In all circumstances let the loyalty of the French government serve as the basis of your decisions. Prove yourselves at once generous and just:—your enemies will know and respect your magnanimity." Such was the principle adopted by the council in the year 1800, and in the case of an enemy's ship, yet we are now told, that this very principle, so honorable to the court, to the nation and to human nature, is utterly unknown to all maritime people. And on what occasion do we hear this: When an enemy's ship is again thrown on the French coast? No—It has been reserved for the wreck of a neutral and friendly vessel! for a ship of the United States! It is not denied, that had the ship escaped the rocks and made the port of Morlaix, the only inhospitality to which she would have been exposed, (under the most rigorous interpretation of the law in question, would have been that of being ordered again to sea. Has then the misfortune of shipwreck so far altered her condition, as to expose her to the injury of confiscation also? And is this among the principles which the defender of maritime rights means to consecrate by his power and by his wisdom? It is impossible.

The 3d reason of the council is, "that the application of the fifth article aforesaid, in as far as it concerns the Americans and other nations, is the result both of the general expressions of that very article, and of the communication recently made by his excellency the grand judge, concerning the primitive intention of the sovereign, that the expedition in question, having certainly been undertaken with full knowledge of the said decree, no objection can be drawn with any propriety from the general rules forbidding a retrospective action, nor in this particular case, from the posterior date of the act in which the sovereign decides the question, since that act sprung from his supreme wisdom, not as an interpretation of a doubtful point, but as a declaration of an anterior and positive disposition."

A distinction is there attempted to be taken between the interpretation of a doubtful point, and the declaration of an anterior and positive rule. This distinction cannot be maintained: for if the rule had been positive, there would have been no occasion for the declaration; neither the minister of marine nor the council of prizes could have had any doubts on the subject; the execution of the decree would have been prompt and peremptory; nor would a *second* act on the part of his majesty, after the lapse of 12 months, have been necessary to give operation to the *first*. Need I appeal to your excellency's memory for the facts on which these remarks turn? You know that doubts did exist—you know that there was under them, even much hesitation in pronouncing—you know that as late as the 9th of August, I sought an explanation of the decree in question, and that even then your excellency (who was surely a competent and legitimate organ of his majesty,) did not think yourself prepared to give it—the conclusion is inevitable—his majesty's answer transmitted to the court of Paris, on the 18th of September following, through the medium of the grand judge, was in the nature of an *interpretation*, and being so, could not without possessing a retro-active quality apply to events many months anterior in date to itself.

The 4th reason of the council, and the last which enters into my present view of the subject, is, "that though one of the principal agents of his majesty had given a contrary opinion, *of which the council had at no period partaken*, this opinion being that of an *individual* could not (whatever a onsideration its author may merit,) balance the formal declaration given in the name of his majesty himself—and that if the communication of this opinion, had as is alledged, given room to and served as a basis for many American shipments, and particularly of the one in question; this circumstance, which may call for the indulgence of his majesty, in a case in which the confiscation is entirely to the advantage of the state, does not prevent a council, rigid in its duty, to pronounce in conformity to the decree of the 21st of November, and of the declaration which followed it."

It would appear from the paragraph, that not finding it easy to untie the knot, the council had determined to cut it.—Pressed by the fact, that an interpretation of the decree had been given by a *minister of his majesty, specially charged* with its execution, they would now escape from this fact, and from the conclusion to which it evidently leads, by alledging—

1st. *That at no time* has the council partaken of the opinion given by the minister: and

2nd. That the opinion being that of an *individual*, could not possess either the force or the authority of one truly ministerial.

It appears to me, as I think it will to your excellency, that the council have in these statements, been less correct than is usual to them on similar occasions, if, as they now assert, they have never partaken of the ministers opinion.—If they have never even hesitated on the question, whether the decree of November did, or did not, derogate from the treaty of 1800? Why, I ask, suspend the American cases generally? or why decide as they did in the case of the Hibernia? If I mistake not, we find in this case, the negociation of the very principle laid down by the minister of marine. That officer says "in my opinion the November decree does not work any change in the rules at present observed with respect to neutral commerce, and consequently none in the convention of the 8th vendem, year 9:" and what says the council? "Admitting that this part of the cargo (the rum and ginger) was of British origin, the dispositions of the November decree, which contain nothing with regard to their own influence over the convention of the 8th Vendem, year 9, evidently cannot be applied to a ship leaving America on the 6th of the same month of November, and of course cannot have authorized her capture in the moment she was entering the neutral port of her destination." We have here three distinct grounds of exemption from the effects of the November decree.

1st. The entire silence of that decree with regard to its own influence over the convention of 1800.

2d. The early period at which the ship left the United States, and

3d. The neutral character of the port to which she was destined. If such, sir, were the principles admitted by the council of the 25th of March last, with what correctness can it be now said, "that at no period have they partaken of the opinion of the minister?"

The 2d fact asserted by the council is, that the interpretation of the decree in question given on the 24th of December, 1806, was *private, not public*, or in other words, that it was the interpretation of the *man*, nor that of the *minister*—and as such cannot outweigh the more recent declaration coming immediately from his majesty himself.

On the comparative weight of these declarations I shall say nothing, nor shall I do more to repel the first part of the insinuation, (*that the minister's declaration was that only of the individual*) than to submit to your excellency my letter of the 20th of December, 1806, claiming from the minister an *official* interpretation of the decree in question, and his answer of the 4th of the same month, giving to me the interpretation demanded.

To your excellency who as late as the 21st of August last, considered the minister of marine as the natural organ of his majesty's will, in whatever regard the decree aforesaid, and who actually applied to him for information relating to it—this allegation of the