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Terms of the Star

ARE TWO DOLLARS AND FIFTY CENTS per annum, payable half yearly IN ADVANCE: No paper can be discontinued until the same is paid for.—

ADVERTISEMENTS,

ARE inserted *three weeks* for *ONE DOLLAR*, and continued *weekly*, for *TWENTY-FIVE CENTS* per square.

Documents,

WHICH ACCOMPANIED THE *MESSAGE OF THE PRESIDENT* OF THE UNITED STATES.

(Continued from last Tuesday's Star.)

The Secretary of State, to Mr. Jackson, Envoy Extraordinary and Minister Plenipotentiary of his Britannic Majesty.

DEPARTMENT OF STATE.

October 9, 1809.

SIR,

An arrangement, as to the revocation of the British orders in council, as well as to the satisfaction required in the case of the attack on the Chesapeake frigate, has been made in due form by the government of the United States with David Montague Erskine, Esq. and accredited minister plenipotentiary of his Britannic majesty. And after it had been faithfully carried into execution on the part of this government and under circumstances rendering its effects on the relative situation of the United States irrevocable, and in some respects, irreparable, his Britannic majesty has deemed it proper to disavow it, to recall his minister, and to send another to take his place.

In such a state of things, no expectation could be more reasonable, no course of proceeding more obviously prescribed by the ordinary respect due to the disappointed party, than a prompt and explicit explanation, by the new functionary of the grounds of the refusal on the part of his government to abide by an arrangement so solemnly made—accompanied by a substitution of other propositions.

Under the influence of this reasonable expectation, the president has learned with no less surprise than regret, that in your several conferences with me you have stated;

1st. That you have no instructions from your government, which authorise you to make any explanations whatever to this government, as to the reasons, which had induced his Britannic majesty to disavow the arrangement lately made by your predecessor, and that therefore you could not make any such explanation.

2d. That in case of the Chesapeake, your instructions only authorise you (without assigning any reason whatever why the reasonable terms of satisfaction tendered and accepted, have not been carried into effect) to communicate to this government a note tendering satisfaction with an understanding that such note should not be signed and delivered by you, until you, should have previously seen and approved the proposed answer of this government, that the signing and delivery of your note and of the answer of this government should be simultaneous.

3d. That you have no instructions, which authorise you to make to this government any propositions whatever in relation to the revocation of the British orders in council; but only to receive such as this government may deem it proper to make to you.

4th. That, at all events, it is not the disposition or the intention of the British government to revoke their orders in council, as they respect the United States, but upon a formal stipulation on the part of the United States, to accede to the following terms and conditions, viz.

1st. That the act of Congress commonly called the non intercourse law, be continued against France, so long as she shall continue her decrees.

2d. That the Navy of Great Britain be authorised to aid in enforcing the provisions of the said act of Congress.

3d. That the United States shall explicitly renounce during the present war, the right of carrying on any trade whatever, direct or indirect with any colony of any enemy of Great Britain, from which they were excluded during peace; and that this renunciation must extend, not only to the trade between the colony and the mother country, but to the trade between the colony and the United States.

If in the foregoing representation, it should appear, that I have in any instance misapprehended your meaning, it will afford me real pleasure to be enabled to lay before the president a statement, corrected agreeably to any suggestions, with which you may be pleased to favor me.

To avoid the misconceptions incident to oral proceedings, I have the honor to intimate that it is thought expedient, that our further discussions, on the present occasion, be in the written form. And with great sincerity I assure you, that whatever communications you may be pleased thus to make, will be received with an anxious solicitude to find them such as may lead to a speedy removal of every existing obstacle to the mutual and lasting friendship and cordiality between the two nations, which it is obviously the interest of both to foster.

With the highest consideration, &c.

(Signed) R. SMITH.

The Hon. Francis James Jackson, &c. &c. &c.

Mr. Jackson to Mr. Smith.

Washington, 11th Octo. 1809.

SIR—I have had the honor of receiving your official letter of the 9th inst. towards the close of which you inform me, that it had been thought expedient to put an end to all verbal communication between yourself and me, in discussing the important objects of my mission.—Considering that a very few days have elapsed, since I delivered to the President a credential letter from the King my master, and that nothing has been even alledged to have occurred to deprive me of the facility of access, and of the credit to which, according to immemorial usage I am by that letter entitled, I believe there does not exist in the annals of diplomacy a precedent for such a determination between two ministers, who have met for the avowed purpose of terminating amicably the existing differences between their respective countries, but after mature reflection, I am induced to acquiesce in it by the recollection of the time that must necessarily elapse before I can receive His Majesty's commands upon so unexpected an occurrence, and of the detriment that would ensue to the public service, if my ministerial functions were, in the interval, to be altogether suspended. I shall therefore content myself with entering my protest against a proceeding which I consider in no other light, than a violation, in my person, of the most essential rights of a public minister, when adopted, as in the present case, without any alledged misconduct on his part. As a matter of opinion, I cannot, I own, assent to the preference which you give to written over verbal intercourse for the purpose of mutual explanation and accommodation. I have thought it due to the public character with which I have the honour to be invested, and to the confidence which his Majesty has most graciously been pleased to repose in me, to state to you unreservedly my sentiments on this point. I shall now proceed to the other parts of your letter, and apply to them the best consideration that can arise from a zeal proportioned to the increase of difficulty thus thrown in the way of the restoration of a thorough good understanding between our respective countries.

You state, sir, very truly that an arrangement had been made between you and Mr. Erskine, and that His Majesty had thought proper to disavow that arrangement.

I have, here in the outset, to regret the loss of the advantage of verbal intercourse with you, as I should have availed myself of it to enquire whether by your statement, it were your intention to complain of the disavowal itself, or of a total want of explanation of it, or of the circumstance of that explanation not having been made through me. I observe that in the records of this mission there is no trace of a complaint, on the part of the United States, of His Majesty having disavowed the act of his Minister. You have not in the conferences we have hitherto held, distinctly announced any such complaint, and I have seen, with pleasure, in this forbearance, on your part, an instance of that candor, which I doubt not will prevail in all our communications, in as much as you could not but have thought, it unreasonable to complain of the disavowal of an act done under such circumstances, as COULD ONLY lead to the consequences that have actually followed.

It was not known when I left England, whether Mr. Erskine had, according to the liberty allowed him, communicated to you *in extenso* his original instructions.—It now appears that he did not. But in reverting to his official correspondence, & particularly to a dispatch addressed on the 26th of April to His Majesty's Secretary of State for Foreign affairs, I find that he there states, that he had submitted to your consideration, the three conditions specified in those instructions, as the ground work of an arrangement which, according to information received from this country, it was thought in England might be made with a prospect of great mutual advantage. Mr. Erskine then reports *verbatim et seriatim* your observations upon each of the three conditions, and the reasons which induced you to think that others might be substituted in lieu of them. It may have been concluded between you that these latter were an equivalent for the original conditions; but the very act of substitution evidently shews that those original conditions were, in fact, very explicitly communicated to you, and by you of course laid before the President for his consideration. I need hardly add, that the difference between these conditions and those contained in the arrangement of the 18th and 19th of April, is sufficiently obvious to require no elucidation, nor need I draw the conclusion, which I consider as admitted by all absence of complaint, on the part of the American government, viz. that under such circumstances, His Majesty had an undoubted and incontrovertible right to disavow the act of his Minister. I must here allude to a supposition, which you have more than once mentioned to me, and by which, if it had any the slightest foundation, this right might perhaps have been in some degree affected. You have informed me that you understood that Mr. Erskine had two setts of instructions, by which to regulate his conduct; and that upon one of them, which had not been communicated either to you or to the public, was to be rested the justification of the terms finally agreed upon between you and him. It is my duty, sir, solemnly to declare to you, and through you to the President, that the dispatch from Mr. Canning to Mr. Erskine, which you have made the basis of an official correspondence with the latter Minister, and which was read by the former to the American Minister in London, is the only dispatch, by which the conditions were prescribed to Mr. Erskine for the conclusion of an arrangement with this country on the matter to which it relates.

To return to the immediate subject of your letter. If, sir, it be your intention to state, that no explanation whatever has been given to the American government of the reasons which induced his majesty to disavow the act of my predecessor, I must, in that case, observe, that in the instructions conveying to him his majesty's intention, those reasons were very fully and forcibly stated; and if he has not transmitted them to you, I can only attribute it to the peculiar delicacy and embarrassment of his situation, for which he probably trusted to the President's goodness to make some allowance; and he might the more reasonably be led to that reliance on it, as a full and ample communication was also made upon the subject by his majesty's Secretary of State for Foreign Affairs, to Mr. Pinkney, to whom the whole of Mr. Erskine's original instruction was read, and who, it was natural to suppose, would convey to his government so much information upon a very momentous occasion, as would relieve Mr. Erskine from the necessity of entering into minute details of the misunderstanding that had occurred. At all events, no complaint can be substantiated against his majesty's government on this score, seeing that they not only instructed the minister who had made the disavowed arrangement as to the motives which occasioned the disavowal, but also with frankness, promptitude, and a most scrupulous regard to national honor, gave notice to the American minister in London of the disavowal, of the motives of it, and of the precautions spontaneously taken by his majesty to prevent any loss or injury accruing to the citizens of the United States, from a reliance on any agreement, however unauthorised, made in his majesty's name. The mere allusion to this latter circumstance dispenses me from further noticing the effects which you describe as being produced upon the United States by the circumstances of this agreement. How far they are irrevocable it is not for me to determine—but the word *irreparable* seems to imply that a loss had been sustained on the occasion by the public or by individuals of this country. So far as his majesty could be by possibility supposed answerable for such an eventual loss, he has, as I have before stated, taken the utmost precaution to avert it.

As to the expectation entertained here, that the explanation of his majesty's share in this transaction should be made through me, I might content myself with simply observing, that I was not provided with instructions to that effect, because it was known that the explanation in question had already been given. But it accords with the sentiments of his majesty towards this country to observe also, that he considered, that as some time must necessarily elapse between my appointment and my entrance on the duties of my ministry, it would be a more friendly mode of proceeding to state without delay, and through the channels I have already mentioned, the motives that compelled his majesty to disavow the agreement, than to leave the American government in uncertainty in these respects, till the unavoidably protracted period of my arrival in America. I say this in regard to the original notification of his majesty's determination, and of the motives of it, which being already made, it could not be supposed in London that a repetition of them would be expected from me; and of course no such case has been foreseen in my instructions.—But if, beyond this, any incidental explanation or discussion should be wished for by this government, I came fully prepared to enter into them. I even consider them to have taken place between us. I have certainly derived great satisfaction from the several hours which we have spent in conference upon these subjects, because they have enabled me to remove some misunderstandings, and to refute many misrepresentations, which you yourself informed me of, in regard to the conduct of the British government. I consider such mutual explanations as highly beneficial to a right understanding of the views and interests of the two countries, and I should with much pleasure have renewed them, if you had not informed me that the President had been pleased to prescribe another and a different mode of conducting our negociations.

I will nevertheless avail myself of that mode which he still permits, to repeat to you that his majesty has authorised me, notwithstanding the ungracious manner in which his former offer of satisfaction for the affair of the Chesapeake was received, to renew that which Mr. Erskine was instructed to make. You have said that you so fully understood the particulars of that offer, that I deem it unnecessary to recapitulate them here: I regret that, since they were so clearly understood by you, you should not yet have been enabled to state to me either in our personal communications, or in the letter which I am now answering, whether they are considered by the President as satisfactory, or whether they are such as he ultimately means to accept. You seem not so distinctly to have understood the form of proceeding in this affair, which I took the liberty of suggesting as likely to lead to a satisfactory result, without however at all precluding any other method which might appear preferable to you. My proposal was, not to communicate a note *tendering* satisfaction, but to agree with you before hand upon the terms of a declaration on the part of his majesty, *which should actually give the satisfaction*, (the conditions of which I informed you that I was authorised to carry into immediate execution) and of a counter declaration to be signed by you on the part of the United States, for the purpose of accepting such satisfaction. I expressly stated that this interchange of official documents was not meant by me as the means of conveying to each other our respective sentiments; *that* I understood to be, as is usual, the object of our conferences; and I imagined that the papers to be signed by us, respectively, would be the result of those sentiments so communicated, and that by being reciprocally corrected and modified, and simultaniously delivered, they would form one compact by which the two countries would be equally bound. This course of proceeding is conformable to the practice of the courts of Europe on similar occasions. You did not at the time appear to object to it; you even requested me to come the next day, prepared with a draft or project of a paper, framed in pursuance to these ideas; and although you desired to refer the subject to the President for his approbation, I do not find in your letter either an expression of his sentiments upon it, or the substitution of any other form that might be more agreeable to him, than the one which I have proposed.

I touch with considerable and very sincere reluctance upon that part of your letter, in which you state that I had not assigned "any reason whatever why the reasonable terms of satisfaction tendered and accepted have not been carried into effect."

I believed that I had observed to you, in the words of my instructions, that if his Majesty were capable of being actuated by any desire to retract an offer of reparation which he had once made. His Majesty might be well warranted in doing so both by the form in which his accredited minister had tendered that reparation, and by the manner in which that tender had been received. I believe that I elucidated this observation by a reference to the particular expressions, which made the terms of satisfaction appear to be unacceptable even to the American government, at the very moment when they were accepted, and which at all events put it totally out of his majesty's power to ratify and confirm any act in which such expressions were contained.

On the subject of his majesty's orders in council, I have had the honor of informing you that his majesty having caused to be made to the government of the United States certain proposals founded upon principles, some of which were understood to originate in American authorities, and others to be acquiesced in by them; and having afterwards ascertained, in a manner mentioned in a former part of this letter, that the sentiments of the American government were so different from what they were first understood to be, I was not instructed to renew to you those proposals, nor to press upon your acceptance an arrangement which had been so recently declined, especially as the arrangement itself is become less important, and the terms of it less applicable to the state of things now existing.

Those considerations which were first intimated in Mr. Canning's official letter to Mr. Pinkney of the 23d September, 1808, and which, in the process of the following six months, acquired greater weight and influence, induced his majesty, before the result of Mr. Erskine's negociation was known, to modify the orders in council of November, 1807, by that of the 26th of April, 1809.

The effect of this new order is to relieve the system under which the former orders were issued, from that which has always been represented in this country, as the most objectionable and offensive part of it—the option given to neutrals to trade with the enemies of Great Britain through British ports on payment of a transit duty. This was originally devised and intended as a mitigation of what is certainly more correct but more rigid in principle—the total and unqualified interdiction of all trade with the enemy. If, however, this mitigation was felt as an aggravation, and, as has been sometimes warmly asserted, as an insult, that cause of complaint is now entirely removed. By the order in council of the 26th April, 1809, all trade with France and Holland, and the ports of Italy, comprehended under the denomination of the kingdom of Italy, is simply prohibited altogether. No option is afforded, and consequently no transit duty is required to be paid. In another respect the order in council of the 26th April must be admitted to be more restrictive than those of November, 1807.

The trade with enemies' colonies which was opened to neutrals at the commencement of the present war by the order in council of the 24th June, 1803, was continued to be left open by those of November, 1807. The order in council of the 26th April retracts this indulgence. But it is to be observed, that, since the period when the orders in council of November, 1807 were issued, the opening of the ports of Spain, of Portugal, of the south of Italy and of Turkey has afforded a more ample scope to neutral commerce, and that by the capture of Martinique, in addition to that of almost all the colonies of the enemies of Great Britain, together with the blockade of Guadaloupe, the extent to which the liberty of commerce with enemies' colonies applied has been so far narrowed, that there is little of practical hardship in recurring to the rule which, however occasionally mitigated in its application, Great Britain can never cease in principle to maintain. It is farther to be observed, that the order in council of the 26th April, has this operation highly favorable to neutrals, that restricting the regulation of blockade to France, Holland and their colonies, and to the territories denomi-