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Documents,

WHICH ACCOMPANIED THE

MESSAGE OF THE PRESIDENT

OF THE UNITED STATES.

Concluded from last Friday's extra Star.

MR. SMITH TO MR. PINKNEY.

Department of State, November 23, 1809.

SIR,

My letters in the correspondence with Mr. Jackson, already transmitted to you, sufficiently evince the disappointment that was felt, on finding that he had not been charged to make to this government either the frank explanations or the liberal propositions, which the occasion manifestly required. Instead of this obvious course of proceeding, it was in the outset perceived, that his object was to bring us to resume the subjects of the arrangement of April in a way, that would imply that we were aware that the arrangement was not binding on his government, because made with a knowlege on our part that Mr. Erskine had no authority to make it, and thus to convert the responsibility of his government for the disavowal into a reproach on this for its conduct in the transaction disavowed. In the first instance it was deemed best rather to repel his observations argumentatively than to meet them as an offensive insinuation. This forbearance had not the expected effect of restraining him from a repetition of the offence. And even on his further insinuations nothing more was done than to premonish him of the inadmissibility of so indecorous a course of proceeding.—This also being without effect, nothing remained but the step finally taken.—And there was the less hesitation in shutting the door to further opportunities for insulting insinuations, as the disclosures he had made and the spirit of his discussions had so entirely shut it to the hope of any favorable result from his mission.

I will not dwell on his reluctance to give up the uncertainties of verbal for the precision of written discussion; nor on the *manner* or the *time* of his denial that he had given any room at all for a statement, which, in order to guard against the misconceptions incident to verbal conferences, I had placed before him in writing, with a request that he would point out any inaccuracies, and to which he did not *then* object otherwise than by intimating, that he could not have made the statement *with the particular view which seemed to be supposed.* Nor will I dwell on the various instances in which partial or inconsistent views of the subject have taken place of its real merits. But it may not be amiss to make some observations on the correspondence, as it relates to the *justification of his government* in having disavowed the act of his predecessor.

With respect to the Orders in council, the *ground* of the disavowal is the *difference* between the arrangement and the printed dispatch of Mr. Canning to Mr. Erskine of the 23d January. According to this dispatch then the arrangement failed in three points.

1st. In not relinquishing the trade of the United States with enemies colonies.

With respect to this point it is not necessary at this time to discuss the right of that trade. It is sufficient to remark, 1st. that as the trade is admitted to have become, in the view of G. Britain, of little practical importance, why has it been made a ground of the disavowal, and, especially, as important considerations only could upon principles of public law have justified a measure of so serious a character? 2d. that as the colonial trade is a subject no wise connected either with the Orders in Council or with the affair of the Chesapeake, why has it been permitted to frustrate an arrangement relating to those subjects; and to those only? 3rd, that as this condition is allowed to have originated in a supposition, that it would be agreeable to the American government, why has it been persisted in after the error was made known by the representation of Mr. Erskine to his government, that neither this nor the other conditions of the despatch of the 23d January were attainable here?

2d. Another point in the despatch, and not in the arrangement, is that the British Navy might capture our trade to ports prohibited by the United States,

This condition too appears to have had its origin in a mistake of your meaning in a conversation with Mr. Canning, as noted by yourself, and in an inference thence deduced as to the disposition of this government. But this double mistake must have been brought to light in time to have been corrected in the new mission. In urging it Mr. Canning has taken a ground, forbidden by those principles of decorum, which regulate and mark the proceedings of governments towards each other. In his despatch the condition is stated to be for the purpose of securing the bona fide intention of America to prevent her Citizens from trading with France and certain other powers. In other words, to secure a pledge to that effect against the *mala fide* intention of the United States. And this despatch too was authorised to be communicated in extenso to the government of which such language was used. Might it not have been reasonably expected that such a condition and such observations would at least on such an occasion have been given up by a government willing to smooth the way to an amicable settlement of existing differences?

In his zeal to vindicate his government Mr. Jackson too has attempted a gloss on this most extraordinary idea of calling on a foreign sovereignty, not indeed to make laws for us, but, what is equivalent in principle, to supply a supposed inability to execute them. He calls such an interposition of his government, not an execution of the law of Congress, but of a compact binding as a public law on both parties, and which both would have a common interest in seeing duly executed. On his own principles there ought to be a reciprocity, not only in the execution of the compact, but in the obligation and interest resulting from it. Besides where there is a reciprocity in compacts between nations touching attributes of sovereignty there is always as much of sovereignty gained as is parted with, so that there be no loss nor indignity on either side.

3. The remaining point in the despatch, not secured by the arrangement, is that which required that whilst our prohibitory laws should be repealed as to Great Britain, they should be left in force as to France and the powers adopting or acting under her decrees.

This is the condition which alone properly belongs to the subject, and it is to be remarked in the first place that the British project, of which this condition makes a part, contemplated two things in their nature incompatible; one, a repeal of the prohibitory acts as to Great Britain, without waiting for the conclusion of a regular treaty, the other, a pledge or engagement for their continuance as to the other powers. Now, from the nature of our constitution, which, in this particular, ought to have been attended to by the British government, it is manifest that the Executive authority could have given no such pledge, that the continuance of the prohibitory acts being a subject of Legislative consideration, could not have been provided for until the meeting of the Legislature, and that the condition could not therefore but have failed, either in the immediate renewal of commerce with G. Britain, or in the immediate engagement that it should not be renewed with France.—The British government ought to have acquiesced in, and indeed, ought to have been satisfied with the attainment of the important object of an immediate repeal of our prohibitory laws and with the consideration, that the other object, not immediately attainable, was unnecessary at the time, because the prohibition as to France was then in force, and because there was every reason to to infer not only from this fact, but from the spirit of the communications made from time to time and from the overtures before submitted to the British government that, without a repeal of the French decrees, our prohibitory laws would be continued in force against France, and especially in the case of a repeal of the British orders, which would necessarily render a continuance of the French decrees doubly obnoxious.

But if on this head doubts could have been entertained, instead of rejecting the arrangement, ought not the repealing act on our part to have been met with a suspension at least of the orders in council, until it could have been seen whether the non-intercourse law would or would not have been continued against France. Such a suspension could not have given, in any point of view, more advantage to the United States, than was given to Great Britain by the repeal, which had taken place on their part.

If this reasonable course could not have been substituted for the disavowal, why was not a final disavowal suspended with a proposition, that the arrangement would be executed by Great Britain, in the event of a compliance on the part of the United States with the condition required as to France?

I am not unaware, you may be told, that the non-intercourse law of the United States did not extend to Holland, though so intimately connected with France, and so subservient to her decrees against neutral commerce.

It would not be improper on this occasion to observe that this objection can be the less urged by Great Britain, as she has herself never in her alledged retaliations adhered to the principle on which they were founded.

Thus she has from the date of them, until very lately, directed them against the American trade even to Russia, although Russia had never adopted the French decrees, nor otherwise violated our neutral trade with Great Britain.—So, in her order of April last, she has discriminated, not only between the countries devoted to France by the ties of blood, and other powers, but between Holland, Westphalia and Naples in enforcing her prohibitory order against the first and not against the two last.—Whilst, therefore, she finds it expedient to make these distinctions, she ought to presume, that we too may perceive equal propriety in the distinctions we have made.

But it may be of more importance here to compare the British Order in Council of April last, with the arrangement of April, made by Mr. Erskine. It will then be seen how little is the real difference, and how trivial it is when compared to the extensive and serious consequences of the disavowal.

Under the order in council of April all the ports of Europe, except France, including the kingdom of Italy and Holland with their dependencies, are opened to our commerce.

Under the arrangement of April combined with our act of non-intercourse, all the ports of Europe, except France and her dependencies, including the kingdom of Italy, would have been opened to our commerce.

The difference then is reduced merely to Holland, and that again is reduced to the difference between a direct trade to the ports of Holland, and an indirect trade to Holland, through the neighboring ports of Tonningen, Hamburg, Bremen and Emden.

Now, as the injuring of the enemies of Great Britain is the only avowed object of her interdicting order against our trade, let a computation be made of the effect, which this difference between the order in council and the arrangement could possibly have in producing such an injury. And then let the question be candidly answered, whether, laying aside all considerations of right and justice, sufficient inducements could have been found in that result for rejecting the arrangement, and for producing the consequent embarrassments, as well to Great Britain, as to the United States.

If it be necessary, as Mr. Jackson has stated, to set bounds to a spirit of encroachments and universal dominion, which would bind all things to its own standard, and to falsify by honorable and manly resistance an annunciation that all Europe is submitting by degrees, the effort must be feeble, indeed, which is to be found in the inconvenience accruing to the formidable foe from the operation of this order in council, and especially when we combine with it the strange phenomenon of substituting for the lawful trade of the United States, a trade of British subjects, contrary to the laws of the adverse party, and amounting, without a special license, in the eye of British law, to high treason.

Thus much for the orders in council. What has taken place with respect to the case of the Chesapeake will equally engage your attention.

You will perceive, that throughout the early stages of the correspondence this case was in some respects improperly confounded with, in others improperly seperated from that of the orders in council; and particularly that pains had been taken by Mr. Jackson to substitute verbal and vague observations on the disavowal of this part of the arrangement for an explicit and formal explanation, such as was obviously due. It will be seen also that when finally brought to the point, he referred for a justification of the disavowal to the departure of Mr. Erskine from his instructions without *shewing* what those instructions were, and to allusions to an expression in the arrangement without giving to his meaning the distinctness pre-requisite to a just reply.

It appears, however, that he says, great stress on the proposals enclosed in his letter of the 27th October, as at once indicating the departure of Mr. Erskine from his instructions, and as containing the conditions on the basis of which he was ready to enter on an adjustment.—And from a note from the Secretary of the British Legation, it appears that he has complained of not having received an answer to this proposal, as he had before complained that no answer had been given to his verbal disclosures on this head in his interviews with me.

With respect to his intimations in conversation, as they were preceded by no proper assignment of the reasons for not having executed the original adjustment, it cannot be necessary to remark that no such notice, as he wished to obtain, could with any sort of propriety have been taken of them.

With respect to his written project, it will suffice to remark:

1st. That, besides his reluctance and indistinct explanation of the disavowal of the original adjustment, he did not present his proposal, until he had made such progress in his offensive insinuation, as made it proper to wait the issue of the reply about to be given to it, and that this issue had necessarily to put a stop to further communications.

2dly. That although he had given us to understand that the ordinary credentials such alone as he had delivered, could not [illegible] case, his proposal had neither been preceded by nor accompanied with the exhibition of other commission or full power: nor, indeed, has he ever given sufficient reason to suppose that he had any such full power to exhibit in relation to this particular case. It is true, that in his letter of the 23d of October, he has stated an authority *eventually* to conclude a *Convention between the two countries.* Without adverting to the ambiguity of the term *eventually* with the mark of emphasis attached to it, and to other uncertainties in the phraseology, it is clear that the authority referred to, whatever it may be, is derived from instructions *subject to his own discretion*, and not from a patent commission, such as might be properly called for. It is true, also, that in his letter of the 14th of Nov. subsequent to his proposal, he says, he was possessed of a full power in due form for the express purpose of concluding a treaty or convention.

But it still remains uncertain, whether by the treaty or convention to which it related, was not meant an *eventual* or provisional treaty on the general relations between the two countries without any reference to the case of the Chesapeake. Certain it is that the British government in former like cases, as will be seen by the adjustment of that part of the affair at Nootka Sound, which is analagous to this case, did not consider any such distinct full power as necessary nor is there the slightest ground for supposing that Mr. Erskine, although confessedly instructed to adjust this very case of the Chesapeake, was furnished with any authority distinct from his credential letter. That Mr. Jackson has any such commission is the less to be supposed, as it is but barely possible, that possessing it he should not on some occasion, or in some form, have used a language susceptible of no possible doubt on this point.

But proceeding to the proposal itself, it is to be kept in mind that the conditions forming its basis, are the very conditions for the deviating from which Mr. Erskine's adjustment was disavowed.—Mr. Jackson, if not on others, is on this point explicit.—"I now add, says he, 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 memoranda enclosed in my official letter to you of the 27th ult."

Considering then the conditions in the proposal as an ultimatum, in what light are we compelled to view such an attempt to repair the outrage committed on the frigate Chesapeake and to heal the disappointment produced by a disavowal of a previous equitable reparation?

It is impossible on such an occasion not recall the circumstances which constituted the character of the outrage to which such an ultimatum is now applied. A national ship, proceeding on an important service, was watched by a superior naval force enjoying at the time the hospitality of our ports, was followed and scarcely out of the waters, when she was, after an insulting summons, attacked in a hostile manner; and the ship so injured as to require expensive repairs, the expedition frustrated, a number of the crew killed and wounded, several carried into captivity, and one of them put to death under a military sentence. The three seamen, tho' American citizens, and therefore, on every supposition detained as wrongfully as the ship would have been detained, have notwithstanding remainded in captivity between two and three years; and, it may be added, after it has long ceased to be denied that they are American citizens.

Under these circumstances we are called upon to ransom the captives.

1st. By acknowledging that a precautionary proclamation, justified by events preceding the outrage, by the outrage itself and by what immediately followed it, was unjustifiable, and that a repeal of it was properly a condition precedent to a reparation for the outrage.—And this requisition is repeated, too, after such an acknowledgment had been uniformly asserted by this government to be utterly inadmissible, and, what is particularly remarkable, at a time when the proclamation, as is well understood, was no longer in force. The occasion obviously invited, a silent assumption of the existing fact, and this would have excluded the difficulty heretofore found to be insuperable.

[illegible] vision the conduct of the officer answerable for the murderous transaction, with a knowledge too on our part, that instead of being punished or even brought to trial, he has been honored by his government with a new and more important command.

3d. By admitting a right on the part of Great Britain to claim a discharge from our service of deserters generally, and particularly of her natural born subjects, without excepting such as had been naturalized in due form under the laws of the United States.

It has not been explained, whether it was meant, as the universality of the term "deserters" would import, to include American citizens who might have left the British service. But what possible consideration could have induced the British government to expect that the United States could admit a principle, that would deprive our naturalized citizens of the legal privileges, which they hold in common with their fellow citizens. The British government ought not to have made such a proposition; because it not only, like others, naturalizes aliens; but in relation to the United States has even refused to discharge from the British service, native citizens of the U. S. involuntarily detained. If any American seamen has resided in G. B. or has married therein, or has accepted a bounty in her naval service, his discharge therefrom, on the regular application to the British government, has been invariably refused by its board of admiralty.—I state on the authority of the official reports made to this department. It is therefore, truly astonishing, that with a knowledge of these facts, such a pretension should have been advanced at all, but above all, that it should have been made a *sine qua non* to an act of plain justice, already so long delayed. This is the more to be regretted, as the omen does not favor the belief we would willingly cherish, that no pre-determination exists in the councils of his Britannic majesty irreconcilable to an amicable arrangement of an affair, which affecting so deeply the honor of the United States, must precede a general regulation of the mutual interests of the two countries.

After the correspondence with Mr. Jackson was terminated, two notes, of which copies are herewith sent to you, were presented to me in the name and by the hand of Mr. Oakley, the British Secretary of Legation.

The first requested a document having the effect of a special passport or