DOCUMENTS

Accompanying the President's Message of the 19th ult.—Concluded.

No. 3.

MR. PINKNEY TO LORD WELLESLEY.

Great Cumberland Place, 10*th Dec.* 1810.

My Lord,—In compliance with the request contained in your note of the 6th inst. I proceed to recapitulate in this letter (with some variations however) the statements and remarks which I had the honor to make in our conference of the 5th respecting the revocation of the French decrees, as connected with a change of system here on the subject of neutral rights.

Your lordship need not be told that I should have been happy to offer at a much earlier moment every explanation in my power on matters of such high concern to the rights & commerce of my country and the future character of its foreign relations, if I had been made to understand that explanation was desired.

My written communications of August and November were concise, but they were not intended to be insufficient. They furnished evidence which I thought conclusive, and abstained from labored commentary because I deemed it superfluous. I had taken up an opinion, which abandoned reluctantly and late, that the British government would be eager to follow the example of France in recalling, as it had professed to do in promulgating, that extraordinary system of maritime annoyance, which in 1807 presented to neutral trade of almost all its directions the hopeless alternative of inactivity or confiscation; which considered it as a subject to be regulated, like the trade of the United Kingdoms, by the statutes of the British Parliament; and undertook to bend and fashion it by every variety of expedient to all the purposes and even the caprices of Great Britain. I had no idea that the remnant of that system, productive of no conceivable advantage to England, and deservedly odious, for its theory and destructive effects to others, could survive the public declaration of France that the edicts of Berlin and Milan were revoked. Instructed at length, however, by your lordship's continued silence, and alarmed for the property of my fellow-citizens, now more than ever exposed, by an erroneous confidence, to the ruinous operation of the British orders, I was preparing to support my general representations by detailed remonstrance, when I received the honor of your note of the 4th inst. In the conference which ensued I troubled your lordship with a verbal communication, of which the following is nearly the substance.

The doubts which appear to stand in the way of the recal of the British orders in council (under which denomination I include certain orders of blockade of a kindred principle and spirit) must refer to the *manner*, or the *terms*, or the *practical effect* of the alledged repeal of the decrees of France.

That the *manner* of the proceeding is satisfactory to the British government cannot be questioned; since it is precisely that in which its own numerous orders for establishing, modifying or removing blockades and other maritime obstructions are usually proclaimed to neutral states and merchants.

The French repeal was officially notified on the 5th of August to the minister plenipotentiary of the United States at Paris by the French minister for foreign affairs; as I had the honor to inform your Lordship in my letter of the 25th of the same month, which not only gave the import, but (as the enclosed copy will shew) adopted the words of general Armstrong's statement to me of the tenor and effect of that notice.

On the 9th of August the notification of Gen. Armstrong was published in the *Moniteur*, the official journal of the French government, as the act of that government; & thus became a formal declaration & a public pledge to all who had an interest in the matter of it.

It would be a waste of time to particularise the numerous instances of analogous practices in England, by which this course is countenanced; but a recent example happens to be before me, and may therefore be mentioned. The partial recal, or modification, of the English blockade of the ports & places of Spain from Gijon to the French territory (itself known to my government, only through a circular notification to me, recited afterwards in the London Gazette) was declared to the American and other governments in exactly the same mode.

I think it demonstrable that the *terms* in which the French revocation was announced are just as free from well founded objection as the *manner*.

Your lordship's view of them is entirely unknown to me; but I am not ignorant that there are those in this country, who, professing to have examined them with care, and having certainly examined them with jealousy, maintain that the revocation, on the 1st of November, was made to depend, by the obvious meaning of those terms, upon a condition precedent which has not been fulfilled, namely, the revocation by G. Britain of her orders in council, including such blockading orders as France complains of as illegal.

If this were even admitted to be so, I am yet to learn upon what ground of justice the British government could decline to meet, by a similar act on its part, an advance, thus made to it by its adversary in the face of the world towards a co-operation in the great work of restoring the liberty of the ocean; so far at least as respects the orders in council of 1807 and 1809, and such blockades as resemble them. It is not necessary, however, to take this view of the question; for the French revocation turns on no condition precedent, is absolute, precise, and unequivocal.

What construction of the document which declares that revocation might be made by determined suspicion and distrust, I have no wish and am not bound to enquire. Such interpreters would not be satisfied by any form of words, and would be likely to draw the same conclusion from perfect explicitness and studied obscurity. It is enough for me that the fair and natural and necessary import of the paper afford no color for the interpretation I am about to examine.

The French declaration "that the decrees of Berlin and Milan *are revoked*, and that from the 1st of November they will cease to have any effect," is precision itself. But they are followed by these words:—"bien entendu qu'en consequence de cette declaration les anglais *revoqueront* leurs arrets de Conseil, et *renounceront* aux nouveaux principes de blocus qu'ils ont voulu etablis, *ou bien* que les Etas Unis, *conformement a l'acte que vous venez de communiquer*, *feront* respecter leurs Droits par les anglais."

If these words state any condition, they state *two*, the first depending upon Great Britain, the last upon the United States; and, as they are put in the disjunctive, it would be extravagant to hold that the non-performance of one of them is equivalent to the non-performance of both. I shall take for granted therefore that the argument against my construction of the Duke of Cadore's letter must be moulded into a new form. It must deal with two conditions instead of one; and, considering them equally as conditions precedent, to be performed (disjunctively) before the day limited for the operative commencement of the French repeal, must maintain that, if *neither* of them should be performed before that day, the decrees were not to be revoked, and consequently that, as neither of them *has* been so performed, the decrees are still in force.

If this hypothesis of previous conditions, thus reduced to the only shape it can assume, be proved to be unsound my construction is at once established; since it is only upon that hypothesis that any doubt can be raised against the exact and perspicuous assurance that the decrees were actually repealed, and that the repeal would become effectual on the 1st of November. This hypothesis *is* proved to be unsound by the following considerations.

It has clearly no foundation in the phraseology of the paper, which does not contain a syllable to put any condition before the repeal. The repeal is represented as a step already taken, to have effect on a day specified. Certain consequences are indeed declared to be expected from this proceeding; but no day is given, either expressly or by implication, within which they are to happen. It is not said "*bien entendu que les anglois auront revoque, &c.*" but "*que les anglois revoqueront, &c.*" indefinitely as to time.

The notion of conditions precedent is therefore, to say the least of it, perfectly gratuitous. But it is also absurd. It drives us to the conclusion that a palpable and notorious impossibility was intended to be prescribed as a condition, in a paper, which they, who think it was meant to deceive, must admit was meant to be plausible.

It was a palpable and notorious impossibility that the United States should, before the 1st of November, execute any condition, no matter what the nature of it, the performance of which was to follow the ascertained failure of a condition, to be executed by G. Britain, at any time before the same 1st of November. That the act expected from the United States was to be consequent upon the failure of the other is apparent. It is also apparent that upon any interpretation, which would make the act of G. Britain a condition precedent to the French repeal, & consequently precedent to the 1st of November, (when the repeal was, if ever, to take effect) that condition could not be said to have failed before the whole period, from the 5th of August to the 1st of November, had elapsed. But if Great Britain had the whole time, within which to elect the course which she would, pursue, what opportunity would be left to the U. S. (equally bound, upon this idea of conditions precedent, to act their part within the same period) to become acquainted with that election, and to decide upon and take their own course in consequence; to say nothing of the transmission of such intelligence of it to Europe as would be indispensable to the efficacy of the conditional revocation.

This general view would alone be sufficient to discredit the arbitrary construction under consideration. But it will be more completely exposed by an explanation of the nature of the act, which the letter professes to expect from the United States, in case Great Britain should omit to revoke This act is the revival of the non-intercourse law against England, France remaining exempt from it, as well as from the provisions of the subsequent law, commonly called the non-intercourse act. Now if it is too plain upon the face of the last mentioned law (to which the letter expressly refers) to escape the most negligent and unskilful observer, that this revival could not by any industry or chance be accomplished before the time fixed for the cessation of the French decrees, or even for a considerable time afterwards, it certainly cannot be allowable to assume, that the revival was required by the letter (whatever was the object of the writer or his government) to precede the cessation. And, if this was not required, it is incontrovertible that the cessation would, by the term of the letter, take place on the appointed day, whether any of the events disjunctively specified had intervened or not.

The first step towards a revival of the non-intercourse against England would be the proclamation of the President, that France had so revoked or modified her edicts as that they ceased to violate the neutral commerce of the United States. But the letter of Monsieur Champagny left the decrees as it found them up to the 1st of November, and consequently *up to that day* it could not, for any thing contained in that letter, be said that the rights of American commerce were no longer infringed by them. A prospective proclamation, that they *would* cease to violate those rights, might perhaps be issued; but it could scarcely have any substantial operation, either in favor of France or to the prejudice of England, until the epoch to which it looked had arrived.

Let it be admitted, however, that all physical and legal obstacles to the issuing, *before the 1st of November*, of a proclamation, to take effect, immediately, were out of the way. How would such a proceeding fulfil of itself the expectation that the United States would, *before the 1st of November* "cause their rights to be respected by the English," in the mode pointed out in the letter, namely, by the enforcement of the non-intercourse law? The proclamation would work no direct or immediate consequence against England. Three months from its date must pass away before the non-intercourse law could revive against her; and, when it did so, the revival would not be the effect of the proclamation, but of the continued adherence of England to her obnoxious system. Thus, even if a proclamation, effectual from its date, had been issued by the President on the day when the French declaration of repeal came to the hands of the American minister at Paris, the intercourse between the U. States and G. Britain would on the 1st of November have remained in the same condition in which it was found in August. As all this was well understood by the government of France. The conclusion is that its minister, professing too to have the American law before him, and to expect only what was *conformably with that law*, did not intend to require the revival of the non-intercourse against England as a condition to be performed before the 1st of November.

It is worthy of remark, as introductory to another view of this subject, that even they who conclude that the repeal of the French decrees has failed, are not backward to ascribe to the French declaration a purpose utterly inconsistent with that conclusion.

They suppose the purpose to have been to affect the existing relations between America and England, by the only means which the declaration states, the act of non-intercourse. And it is certain that, unless England should abandon particular parts of her system, this *was* the result avowedly in view, and meant to be accomplished.

But there could be no hope of such a result without a previous effectual relinquishment of the French decrees.—A case could not otherwise be made to exist (as the Duke of Cadore was aware) for such an operation of the American law. To put the law before the revocation of the edicts was impossible.—With the law in his hand it would have been miraculous ignorance not to know that it was the exact reverse of this which his paper must propose. He would derive this knowledge, not from that particular law only, but from the whole tenure and spirit of American proceedings, in that painful and anomalous dilemma, in which G. Britain and France, agreeing in nothing else, had recently combined to place the maritime interests of America. He would collect from those proceedings that, while those conflicted powers continued to rival each other in their aggressions upon neutral rights, the government of the United States would oppose itself impartially to both. The French declaration, then, had either no meaning at all, or it meant to announce to General Armstrong a positive revocation of the French edicts.

I should only fatigue your lordship by pursuing farther a point so plain and simple. I will therefore merely add to what I have already said on this branch of the subject, that the strong and unqualified communication from General Armstrong to me, mentioned in the commencement of this letter, and corroborated by subsequent communications (one of which I now lay before you) may perhaps, without any great effort of courtesy, be allowed to contain, that "authentic intelligence," which your Lordship is in search of. He could scarcely have been free from doubt if the occasion was calculated to suggest it, and, if he had really doubted, would hardly have spoken to me with the confidence of conviction.

It only remains to speak of the *practical effect* of the French repeal. And here your Lordship must suffer me to remind you that the orders of England in 1807 did not wait for the practical effect of the *Berlin* decree, nor linger till the obscurity, in which the meaning of that decree was supposed to be involved, should be cleared away by time or explanation. They came promptly after the decree itself, while it was not only ambiguous but inoperative, and raised, upon an idle prohibition, and a yet more idle declaration, which France had not attempted to enforce, and was notoriously incapable of enforcing, a vast scheme of oppression upon the seas, more destructive of all the acknowledged rights of peaceful states than history can parallel. This retaliation, as it was called, was so rapid that it was felt before the injury which was said to have provoked it; and yet, that injury, such as it was, was preceded by the practical assertion, on the part of G. Britain of new and alarming principles of public law, in the notification of the blockade of May, 1806, and in the judicial decisions of the year before. To uphold the retaliatory orders, every thing was presumed with a surprizing facility.—Not only was an impotent, unexecuted, and equivocal menace presumed to be an active scourge of the commerce of neutral nations, but the acquiescence of those nations was presumed, against the plainest evidence of facts.

The alacrity with which all this was done can never be remembered without regret and astonishment; but our regret and astonishment must encrease, if, after four years have been given to the pernicious innovation, which these presumptions were to introduce and support, something like the same alacrity should not be displayed in seizing an honorable opportunity of discarding it forever.

It is not unnatural to imagine that it *will be* discarded with pleasure when it is considered that, having never been effectual as an instrument of hostility, it cannot now lay claim to those *other* recommendations for which it may have heretofore been prized.—The orders in council (of Nov.) have passed through some important changes; but they have been steady, as long as it was possible, to the purpose which first impressed upon them a character not to be mistaken.

In their original plan they comprehended not only France and such allied or dependent powers as had adopted the edicts of Berlin, but such other nations as had merely excluded from their ports the commercial flag of England. This prodigious expansion of the system was far beyond any intelligible standard of *retaliation*; but it soon appeared that neutrals might be permitted to traffic under certain restrictions, with all these different nations, provided they would submit, with a dependence truly colonial, to carry on their trade through British ports, and to pay such duties as the British government should think fit to impose, and such charges as British agents and other British subjects might be content to make.

The United States abstained from this traffic, in which they could not embark without dishonor. And in 1809 the system shrunk to narrower dimensions, and took the appearance an absolute prohibition of all commercial intercourse with France, Holland and the kingdom of Italy.

The prohibition was absolute in appearance, but not in fact. It had lost something of former exuberance, but nothing of former pliancy; and in the event was soon to yield to the demands of one trade, while it prevented every other—controuled and relaxed and managed by licenses, it did not, after a brief exhibition of impartial sternness, affects to "distress the enemy" by the occlusion of his ports, when the commerce of *England* could advantageously find its way to them—at length, however, the convenience seems to be enjoyed no longer; and the orders in council may apparently be now considered (if indeed they ought not always to have been considered) as affecting England with a loss as heavy as that which they inflict on those whose rights they violated. In such circumstances, if it be too much to expect the credulity of 1807, it may yet be hoped that the evidence of the *practical effect* of the French repeal need not be very strong to be satisfactory. It is however as strong as the nature of such a case will admit; as a few observations will shew.

On such an occasion it is no paradox to say that the want of evidence is itself evidence. That certain decrees are not in force is proved by the absence of such facts as would appear if they *were* in force. Every motive, which can be conjectured to have led to the repeal of the edicts, invites to the full execution of that repeal; and no motive can be imagined for a different course—those considerations are alone conclusive.

But further, it is known that American vessels, bound confessedly to England, have, before the 1st of November, been visited by French privateers and suffered to pass, upon the foundation of the prospective repeal of the decree of Berlin, and the proximity of the day when it would become an actual one.

If there are not even stronger facts to shew that the decree of *Milan* is also withdrawn, your lordship can be at no loss for the reason. It cannot be proved that an American vessel is practically held by France not to be denationalized by British visitation, because your cruizers *visit* only to *capture*, and compel the vessel visited to terminate her voyage, not in France, but in England. You will not ask for the issue of an experiment which yourselves intercept, nor complain that you have not received evidence, which is not obtained because you have rendered it impossible. The vessel formed the subject of my note of the 8th inst. and another, more recently seized as a prize, would, if they had been suffered as they ought, to resume their voyages after having been stopped and examined by English cruizers, have furnished on that point unanswerable proof; and I have reason to know that precise offers have been made to the British government to put to a practical test the disposition of France in this respect, and that those offers have been refused. Your cruizers, however, have not been able to *visit* all American vessels bound to France—and it is understood that such as have arrived have been received with friendship.

I cannot quit this last question without entering my protest against the pretention of the British government to postpone the justice, which it owes to my government and country, for this tardy investigation of consequences. I am not able to comprehend upon what the pretention rests, nor to what limits the investigation can be subjected. If it were even admitted that France was more emphatically bound to repeal her almost nominal decrees, than Great Britian to repeal her substantial orders (which will not be admitted) what more can reasonably be required by the latter than has been done by the former? The decrees are officially declared by the government of France to be repealed—They were ineffectual, as a material prejudice to England before the declaration, and must be ineffectual since. There is, therefore, nothing of substance for this dilatory enquiry, which if once begun may be protracted without end, or at least till the hour for just and prudent decision has past. But, if there were room to apprehend that the repealed decrees might have some operation in case the orders in council were withdrawn, still, as there is no sudden and formidable peril to which Great Britain could be exposed by that operation, there can be no reason for declining to act at once upon the declaration of France, and to leave it to the future to try its sincerity, if that sincerity be suspected.

I have thus disclosed to your lordship, with that frankness which the times demand, my view of a subject deeply interesting to our respective countries.—The part which Great Britain may act on this occasion cannot fail to have important and lasting consequences, and I can only wish that they may be good.—By giving up her orders in council and the blockades to which my letter of 21st September relates, she has nothing to lose in character or strength. By adhering to them she will not only be unjust to others, but unjust to herself.

I have the honor to be, with the highest consideration, my lord, your lordship's most obedient humble servant,

(Signed) WM. PINKNEY.

The most Noble

The Marquis Wellesley, &c. &c. &c.

NORWICH, March 6.

FIRE. Last Wednesday morning at 4 o'clock, the house of Mr. Andrew Griswold, situated near the foot of Beanhill, was discovered to be in flames; and so great was the head to which they had attained, that all attempts to save the building, or ony part of its contents, were wholly unavailing, altho' the citizens and firemen turned out with their usual alacrity on such occasions, in defiance of the weather, which was cold and rainy.

We wish, however, that the house and its contents had been the only loss. But we are sorry to say that this was not the case. Miss Phœbe Hunn, sister-in-law of Mr. Griswold, perished in the flames. It was with the utmost difficulty that the rest of the family escaped a similar fate. One of them, a young woman, was badly wounded in the foot on leaping from one of the windows.