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WASHINGTON, NOVEMBER 29.
Documents, which accompanied the Message of the President of the United States.

LETTER FROM MR. ERSKINE,
Envoy Extraordinary and Minister Plenipotentiary of his Britannic Majesty to the Secretary of State.

Washington, July 31, 1809.

SIR—I have the honor to inclose to you a copy of an Order, which was passed by His Majesty in Council on the 24th of May last.

In communicating this Order, it is with the deepest regret that I have to inform you, that His Majesty has not thought proper to confirm the late provisional agreement which I had entered into with you on the part of our respective governments.

Neither the present time, nor the occasion, will afford me a favorable opportunity for explaining to you the grounds and reasons upon which I conceived I had conformed to His Majesty's wishes, and to the spirit, at least, of my instructions upon that subject; nor, indeed, would my vindication of my conduct, (whatever I may have to offer) be of any importance further than as it might tend to shew that no intention existed on my part to practise any deception towards the government of the United States.

I have the satisfaction, however, to call your attention to that part of the inclosed order, which protects the commerce and shipping of the United States from the injury and inconveniences which might have arisen to American citizens from a reliance on the provisional agreement before mentioned; and I cannot but cherish a hope, that no further bad consequences may result from an arrangement, which I had fully believed would have met with His Majesty's approbation, and would have led to a complete and cordial understanding between the two countries.

With sentiments of the highest respect and consideration, I have the honor to be, Sir, your most obedient humble servant,
D. M. ERSKINE.

The Hon. Robert Smith, &c. &c. &c.

The Secretary of State to Mr. Erskine.

Department of State, August 9th, 1809.

SIR—I have just received from Mr. Pinkney a letter, inclosing a printed paper, purporting to be a copy of a dispatch to you from Mr. Canning, which states among other things that "from the report of your conversations with Mr. Madison, Mr. Gallatin and Mr. Smith, it appears—

"1st. That the American government is prepared, in the event of His Majesty's consenting to withdraw the Orders in Council of January and November 1807, to withdraw contemporaneously on its part, the interdiction of its harbors to ships of war, and all non-intercourse and non-importation acts, so far as respects Great-Britain, leaving them in force with respect to France and the powers which adopt or act under her decrees.

"2d. That America is willing to renounce, during the present war, the pretension of carrying on in time of war all trade with the enemy's colonies, from which she was excluded during peace.

"3d. Great-Britain, for the purpose of securing the operation of the embargo, and the bona fide intention of America, to prevent her citizens from trading with France, and the powers adopting and acting under the French decrees, is to be considered as being at liberty to capture all such American vessels, as may be found attempting to trade with the ports of any of these powers; without which security for the observance of the embargo, the raising it nominally with respect to Great-Britain alone, would in fact, raise it with respect to all the world."

I have the honor to request you to favor me with such explanations, as your candour will at once suggest, in relation to these imputed conversations.

I forbear to express to you sir, the surprise that is felt at the extraordinary pretensions set forth in this letter of instruction, and especially at the expectation that this government would, as a preliminary, recognize conditions, two of which are so manifestly irreconcilable to the dignity and interest of the United States. I however, would remark, that had you deemed it proper to have communicated in extenso this letter, it would have been impossible for the President to have perceived in its conditions, or in its spirit, that conciliatory disposition which had been professed, and which, it was hoped, had really existed.

I have the honor to be, &c.

(Signed)

R. SMITH.

The Hon. David M. Erskine, &c. &c. &c.

From Mr. ERSKINE to Mr. SMITH.

Washington, August 14th, 1809.

SIR—I have the honor to acknowledge the receipt of your letter of the 9th instant, informing me that you had just received a letter from Mr. Pinkney inclosing a printed paper, purporting to be a copy of a dispatch to me from Mr. Canning, which states, among other things, "from the report of your conversations with Mr. Madison, Mr. Gallatin, and Mr. Smith, it appears—

"1st. That the American government is prepared, in the event of His Majesty's consenting to withdraw the Orders in Council of January and November 1807, to withdraw contemporaneously on its part, the interdiction of its harbors to ships of war, and all non-intercourse and non-importation acts so far as respects Great-Britain leaving them in force with respect to France and the powers which adopt or act under her decrees.

"2d. That America is willing to renounce during the present war, the pretension of carrying on, in time of war, all trade with the enemies' colonies, from which she was excluded during peace.

"3d. Great-Britain, for the purpose of securing the operation of the embargo, and the bona fide intention of America to prevent her citizens from trading with France and the powers adopting and acting under the French decrees is to be considered as being at liberty to capture all such American vessels as may be found attempting [to trade,] with the ports of any of these powers, without which security for the observance of the embargo, the raising it nominally with respect to Great-Britain alone, would, in fact, raise it, with respect to all the world."

The explanations which you request from me upon that subject shall be given with candor, and I will proceed, accordingly, to lay before you an abstract of the communications which I made to His Majesty's government relative to the unofficial conversations which I had held with Mr. Madison, (then Secretary of State) Mr. Gallatin and yourself at the time and upon the occasion alluded to by His Majesty's Secretary of State (Mr. Canning) in that part of his instructions to me of which you inform me you have received a printed copy from Mr. Pinkney.

Upon referring to my dispatches, addressed to His Majesty's government of the 31 and 4th December last, in which these communications are detailed, I conclude that the conversations alluded to must have been held some days previous to that period, and were to the following effect—

Mr. Madison, (then Secretary of State) is represented by me to have urged various arguments tending to prove that the United States had exerted all their efforts to persuade the French government to withdraw their unjust restrictions upon neutral commerce, and that recourse might have been had to measures of more activity and decision against France than mere remonstrances, but that, in the mean time Great-Britain had issued her Orders in Council, before it was known whether the United States would acquiesce in the aggressions of France, and thereby rendered it impossible to distinguish between the conduct of the two belligerents, who had equally committed aggressions against the United States.

After some other observations, Mr. Madison is stated by me at that time to have added, that as the world must be convinced that America had in vain taken all the means in her power to obtain from Great-Britain and France a just attention to her rights as a neutral power by representations and remonstrances, that she would be fully justified in having recourse to hostilities with either belligerent, and that she only hesitated to do so from the difficulty of contending with both; but that she must be driven even to endeavor to maintain her rights against the two greatest powers in the world; unless either of them should relax their restrictions upon neutral commerce: in which case, the United States would at once side with that power against the other which might continue its aggressions.

That every opinion which he entertained respecting the best interests of his country led him to wish that a good understanding should take place between Great-Britain and the United States, and that he thought that the obvious advantages which would thereby result to both countries were a sufficient pledge of the sincerity of his sentiments.

These observations, Sir, I beg leave to remark, were made to me by Mr. Madison about a month after the intelligence had been received in this country of the rejection by His Majesty's government of the proposition made through Mr. Pinkney by the President for the removal of the embargo as respected Great-Britain, upon condition that the Orders in Council should be withdrawn as respected the United States; and his sentiments were, as I conceived, expressed to me, in order that I might convey them to His Majesty's government, so as to lead to a reconsideration of the proposition above-mentioned with a view to the adjustment of the differences upon that subject between the respective countries. But I never considered that Mr. Madison meant that the government of the United States would pledge themselves beyond the proposition respecting the embargo, as above stated; because that was the extent of the power of the President by the Constitution of the United States.

I understood, very distinctly, that the observations of the Secretary of State were intended to convey an opinion as to what ought and would be the course pursued by the United States, in the event of His Majesty's Orders in Council being withdrawn.

In these sentiments and opinions, you concurred, as I collected from the tenor of several conversations which I held with you at that period.

With respect to the second point, as stated in your letter

to be contained in a "Dispatch from Mr. Canning," I beg leave to offer the following explanation:

In the course of a private interview I had with Mr. Gallatin, (the Secretary of the Treasury) he intimated that the non-intercourse law which was then likely to be passed by the Congress, might be considered as removing two very important grounds of difference with Great-Britain, viz. the non-importation act, as applicable to her alone, and also the President's Proclamation, whereby the ships of Great-Britain were excluded from the ports of the United States, while those of France were permitted to enter—but that by the non-intercourse law, both powers were placed on the same footing. He did not pretend to say that this measure had been taken from any motives of concession to Great-Britain; but as, in fact, those consequences followed, he conceived they might be considered as removing the two great obstacles to a conciliation.

He adverted also to the probability of an adjustment of another important point in dispute between the two countries, as he said he knew that it was intended by the United States to abandon the attempt to carry on a trade with the colonies of belligerents in time of war, which was not allowed in time of peace, and to trust to their being permitted by the French to carry on such trade in peace, so as to entitle them to a continuance of it in time of war.

As it may be very material to ascertain what "trade with the colonies of belligerents" was, in my conception, meant by Mr. Gallatin, as intended to be abandoned by the United States, I feel no hesitation in declaring, that I supposed he alluded to the trade from the colonies of belligerents direct to their mother country, or to the ports of other belligerents, because the right to such trade had been the point in dispute; whereas, the right to carry on a trade from the colonies of belligerents to the United States had never been called in question, and had been recognized by His Majesty's Supreme Court of Admiralty; and the terms even upon which such colonial produce might be re-exported from the United States had been formerly arranged in a treaty signed in London by the Ministers Plenipotentiary of both countries, which was not indeed ratified by the President of the United States; but was not objected to as to that article of it which fettered the terms upon which such trade was to be permitted.

Such was the substance, Sir, of the unofficial conversations which I had held with Mr. Madison, Mr. Gallatin, and yourself, which I did not consider or represent to His Majesty's government as intended with any other view than to endeavor to bring about the repeal of the Orders in Council by shewing that many of the obstacles which had stood in the way of an amicable adjustment of the differences between the two countries were already removed, and that a fair prospect existed of settling what remained; since the United States had exhibited a determination to resist the unjust aggressions upon her neutral rights, which was all that Great-Britain had ever required; but I certainly never received any assurances from the American government that they would pledge themselves to adopt the conditions specified in Mr. Canning's instructions as preliminaries; nor did I ever hold out such an expectation to His Majesty's government; having always stated to them that in the event of His Majesty's thinking it just or expedient to cause his Orders in Council to be withdrawn that the President would take off the embargo as respected England, leaving it in operation against France and the powers which adopted, or acted under, her decrees; according to the authority which was vested in him at that time by the Congress of the United States, and that there was every reason to expect that a satisfactory arrangement might be made upon the points of the colonial trade which had been so long in dispute between the two countries.

As to the third condition referred to by you, specified in Mr. Canning's instructions, I have only to remark, that I never held any conversation with the members of the government of the United States, relative to it, until my late negotiation—or had ever mentioned the subject to His Majesty's government—it having, for the first time, been presented to my consideration in Mr. Canning's dispatch to me of the 29th of January in which that idea is suggested, and is stated to have been assented to by Mr. Pinkney.

It would be unavailing, at the present moment, to enter upon an examination of the "pretensions set forth in Mr. Canning's letter of instructions" (which you are pleased to term) extraordinary."

I consider it, however, to be my duty to declare that, during my negotiation with you which led to the conclusion of the provisional agreement, I found no reason to believe that any difficulties would occur in the accomplishment of the two former conditions, as far as it was in the power of the President of the United States to accede to the first, and consistently with the Explanation which I have before given of the second point:—On the contrary I received assurances through you, that the President would comply (as far as it was in his power) with the first condition, and that there could be no doubt that the Congress would think it incumbent upon them to assert the rights of the United States against such powers as should adopt or act under the decrees