

of France as soon as their actual conduct or determinations upon that subject could be ascertained—but that, in the mean time, the President had not the power, and could not undertake to pledge himself in the formal manner required to that effect.

I received also assurances from you, that no doubt could be reasonably entertained that a satisfactory arrangement might be made in a treaty upon the subject of the second condition mentioned in Mr. Canning's instructions according to my explanation of it in the foregoing part of this letter, but that it necessarily would form an article of a treaty in which the various pretensions of the two countries should be settled.

The third condition you, certainly, very distinctly informed me could not be recognized by the President, but you added what had great weight in my mind, that you did not see why any great importance should be attached to such a recognition; because it would be impossible that a citizen of the United States could prefer a complaint to his government on account of the capture of his vessel while engaged in a trade absolutely interdicted by the laws of his country.

Under these circumstances, therefore, finding that I could not obtain the recognitions specified in Mr. Canning's dispatch of the 23d of January (which formed but one part of his instructions to me) in the formal manner required, I considered that it would be in vain to lay before the government of the United States the dispatch in question, which I was at liberty to have done *IN EXTENSO*, had I thought proper. But as I had such strong grounds for believing that the object of His Majesty's government could be attained, though in a different manner, and the spirit, at least, of my several letters of instructions be fully complied with, I felt a thorough conviction upon my mind that I should be acting in conformity with His Majesty's wishes; and, accordingly, concluded the late provisional agreement on His Majesty's behalf with the government of the United States.

The disavowal by His Majesty is a painful proof to me that I had formed an erroneous judgment of His Majesty's views and the intention of my instructions; and I have most severely to lament that an act of mine, (though unintentionally,) should produce any embarrassments in the relations between the two countries.

It is a great consolation to me, however, to perceive that measures have been adopted by both governments to prevent any losses and to obviate any inconveniences which might have arisen to the citizens or subjects of either country from a reliance on the fulfilment of that provisional agreement; and I cannot but cherish a hope, that a complete and cordial understanding between the two countries may be effected.

I beg leave to add that it would have given me great happiness to have contributed to so desirable an object, and to offer you the assurances of the great respect and high consideration with which I remain, Sir, your most obedient humble servant,
D. M. ERSKINE.

The Hon. R. Smith, &c. &c. &c.

The Secretary of the Treasury to Mr. Erskine.
Washington, 13th August, 1809.

SIR—I do not believe, that in the conversations we have had respecting the practicability of an adjustment of the differences between the U. States and Great-Britain, we ever have misunderstood one another. Yet as from Mr. Canning's instructions lately published by our government, it would seem that some opinions are ascribed to several members of this administration, which they did not entertain, it appears necessary to ascertain whether on any point a misapprehension can have taken place.

I will forbear making any observations on what in the instructions is called the third condition, since it is not asserted that that inadmissible proposition was suggested at Washington.

The points embraced in Mr. Canning's first proposition formed the principal topic of our conversations, relative to a revocation of the Orders in Council. Yet in the manner in which that proposition is expressed, it goes further than had been suggested by the members of the administration.—It is sufficiently evident from the proceedings of Congress, both previous and subsequent to the unratified agreement of April last, that the United States intended to continue the restrictions on the commercial intercourse with France, whilst such of her decrees as violated our neutral rights continued in force, and to remove those restrictions in relation to Great-Britain, in the event of a revocation of the Orders in Council. But that state of things so far as it related to France was to result from our own laws known or anticipated by your government when they authorized an arrangement; and it was not proposed by us that the continuance of the non-intercourse with France should be made a condition of that arrangement. Whilst on that subject, I will add an observation, though perhaps not immediately connected with the object of this letter. I think that the object of that proposition, so far as it agreed with your previous understanding of the intentions of this government, has been substantially carried into effect on our part. It is true that your government might at the date of the instructions have expected from the incipient proceedings of Congress, that Holland would be embraced by the restrictive laws of the United States. Not only however, was the omission nominal, since American vessels were at the time by the decrees of that country refused admission into its ports; but under the same construction of our laws by which the commercial intercourse with Holland was permitted, that with Portugal was also considered as legal in the event of that country being occupied by British troops in the name of the Prince Regent.

It is therefore principally as respects the second condition which relates to the colonial trade, that erroneous inferences might be drawn from the expressions used in Mr. Canning's instructions. Although the subject must have been mentioned here incidentally, and only in a transient manner; as it is one to which I had paid particular attention, and on which my opinion had never varied, I think that I can state with precision in what view I have always considered it, and must have alluded to it.

1. I never could have given countenance to an opinion that the United States would agree, or that it would be proper to make any arrangement whatever respecting the colonial trade, a condition of the revocation of the Orders in Council. The two subjects were altogether unconnected, and I am confident that such a proposition was never suggested either by you, or by any member of this administration. Such an arrangement could be effected only by treaty; and it is with a considerable degree of surprise that I see your government now asking not only resistance to the French decrees, but the abandonment of a branch of our commerce, as the price of the revocation of the Orders in Council. This seems to give a new character to a measure which had heretofore been represented as an act of retaliation reluctantly adopted, and had been defended solely on the ground of a supposed acquiescence on the part of the United States in the injurious decrees of another nation.

2. In the event of a treaty embracing all the points in dispute, and particularly that of impositions, without which I trust no treaty will ever take place, it was my opinion, and I may certainly have expressed it, that if the other subjects of difference were arranged that respecting the colonial trade would be easily adjusted. I had considered the principles recognized in a former correspondence, between Lord Hawkebury and Mr. King on the subject of colonial trade, and subsequently again adopted in the treaty negotiated by Messrs. Munroe and Pinkney, as a general basis agreed on under different administrations, by both governments, from which neither could now recede, and susceptible only of modification as to details. The instructions to our Ministers in London on that subject had also been published and were known to your government. I therefore believed that the United States, in the event of a treaty, would still be disposed to waive for the present, in the manner and on the terms contemplated by those instructions, their right to that branch, and to that branch only, of the colonial trade, known by the name of *direct trade*, that is to say the trade carried directly from belligerent colonies to the belligerents in Europe, when that trade was not permanently in peace as in war permitted by the laws of the country to which those colonies belonged. The right to a trade between such colonies and the United States generally, and to that in colonial articles between the United States and other countries, never can, or will in my opinion, be abandoned, or its exercise be suspended by this government. On the contrary, it is solely in order to secure, by an express treaty stipulation, that trade against the danger of interruption, and thus by a mutual spirit of accommodation to avoid collisions, that the abandonment of the direct branch can ever be assented to.

Permit me therefore to request, that you will inform me, whether you understood me on those two points, as I certainly meant to be understood; namely, that the relinquishment, during the present war, of what is called the direct trade, was alone contemplated; and that no arrangement on that subject was suggested as a condition of the revocation of the Orders in Council.

I have the honor to be, with the highest respect and consideration, Sir, your most obedient servant.

(Signed) ALBERT GALLATIN.

Hon. D. M. Erskine, Minister Plenipotentiary, &c. &c.

Mr. Erskine to the Secretary of the Treasury.

Washington, August 15th, 1809.

SIR—I have the honor to acknowledge the receipt of your letter of the 13th inst. in which you have been pleased to say that although you "do not believe that in the conversations we have had respecting the practicability of an adjustment of the differences between United States and Great-Britain, we ever have misunderstood one another.—Yet, as from Mr. Canning's instructions, lately published by my government, it would seem that some opinions are ascribed to several members of this administration which they did not entertain, it appears necessary to ascertain whether, on any point, a misapprehension can have taken place."

I answer to your enquiries, I have great satisfaction in assuring you that there appears to have been no misunderstanding respecting the substance or meaning of the conversations which passed between us, as stated in Mr. Canning's instructions alluded to.

After the most careful perusal of your statement of the purport of our conversations, I cannot discover any material difference from the representation which I have made upon that subject to the Secretary of State (Mr. Robert Smith) in my letter to him of the 14th inst. to which I will therefore beg leave to refer you, as I have therefore detailed the substance of the conversation according to my recollection of it; which is in every respect essentially the same as that which you seem to have entertained.

During the conversation which we held respecting the practicability of an amicable adjustment of the differences between the two countries, when the relinquishment by the United States during the present war, of what is called the colonial trade, was suggested by you, I conceived that you meant (as you have stated) "the trade carried directly from belligerent colonies to the belligerents in Europe, when that trade was not permanently in peace as in war, permitted by the laws of the country to which those colonies belonged."

I never supposed that you intended to convey an opinion that the government of the United States would make any arrangement respecting the colonial trade as a condition of the revocation of the Orders in Council, the two subjects being altogether unconnected; nor have I ever represented to His Majesty's government, that such preliminary pledges would be given.

With sentiments of the highest respect, I have the honor to be, Sir, your most obedient humble servant.

(Signed) D. M. ERSKINE.

The Hon. Albert Gallatin, &c. &c.

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

Department of State, October 9th, 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. an 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 recal 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 authorize 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 explanations.

2d. That in the case of the Chesapeake, your instructions only authorize 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, and that the signing and the delivery of your note and of the answer of this government should be simultaneous.

3d. That you have no instructions, which authorize 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 authorized 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 that 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 October, 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 alleged 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 can consider in no other light, than as a violation, in my person, of the most essential rights of a public minister when adopted, as in the present case, without any alleged 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 honor 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