

I must here repeat, what was suggested in my former letter, that the successor of Mr. Erskine is the proper functionary for a proper explanation. Nor can I perceive the force of your remark, that the delay incident to your arrival in the United States rendered it more consistent with the friendly sentiments of his Majesty to prefer the other channels for communicating the motives for his disavowal. To your own reconsideration I appeal whether the course most consonant to those friendly sentiments was not the obvious one of employing the new organ, guarding at the same time against any misconstruction of the delay by apprising the American government through its minister of the cause of it: The supposition, that the delay incident to your mission gave rise to the conversation of Mr. Canning and Mr. Pinkney, is not reconcilable to the correspondence of the latter, which contains no such indication. On the contrary it distinctly shews that he was apprized of the intention to replace Mr. Erskine by a successor, whom he regarded as the proper channel for the explanatory communications, that he understood Mr. Canning to be under the same impression, and that he learned from yourself, not more than two days after his conversations with Mr. Canning, that you were to sail for the United States within three weeks.

Although it may not have been your intention to have given this subject a posture which it would not have naturally assumed, yet such has been the tendency of some of your remarks, and particularly of the conclusion you have drawn from the two circumstances, 1st. That no trace of complaint from this government against the disavowal appears in the records of the British mission, or was distinctly announced by me in our conferences, and 2d. that from the official correspondence of Mr. Erskine with his government, it appears, that although he did not communicate in extenso his original instructions, he submitted to me the three conditions therein specified and received my observations on each.

If there be no trace of complaint against the disavowal in the archives of the mission, it is because this government could not have entered such complaint before the reasons for the disavowal had been explained, and especially as the explanations were fully and confidently expected through the new functionary. And as to the supposed reserve on my part on this subject in our several conferences, I did imagine, that my repeated intimations to you of the necessity of satisfactory explanations, as to the disavowal, were sufficient indications of the dissatisfaction of this government with respect to the disavowal itself.

The stress you have laid on what you have been pleased to state as the substitution of the terms finally agreed on, for the terms first proposed, has excited no small degree of surprise. Certain it is that your predecessor did present for my consideration the three conditions which now appear in the printed document—that he was disposed to urge them more than the nature of two of them (both palpably inadmissible and one more than merely inadmissible) could permit, and that on finding his first proposals unsuccessful, the more reasonable terms comprised in the arrangement respecting the orders in council were adopted. And what, sir, is there in this to countenance the conclusion you have drawn in favor of the right of his Britannic Majesty to disavow the proceeding? Is any thing more common in public negotiations than to begin with a higher demand, and, that failing, to descend to a lower? To have, if not two sets of instructions, two or more than two grades of propositions in the same set of instructions, to begin with what is the most desirable and to end with what is found to be admissible in case the more desirable should not be attainable. This must be obvious to every understanding, and it is confirmed by universal experience.

What were the real and entire instructions given to your predecessor is a question essentially between him and his government. That he had, or at least, that he believed he had sufficient authority to conclude the arrangement, his formal assurances, during our discussions, were such as to leave no room for doubt. His subsequent letter of the 15th June renewing his assurance to me "that the terms of the agreement so happily concluded by the recent negotiation will be strictly fulfilled on the part of his Majesty," is an evident indication of what his persuasion then was as to his instructions. And with a view to shew what his impressions have been even since the disavowal, I must take the liberty of referring you to the annexed extracts (See C.) from his official letters of the 31st July and of the 14th of August.

The declaration "that the dispatch from Mr. Canning to Mr. Erskine of the 23d January is the only dispatch by which the conditions were prescribed to Mr. Erskine for the conclusion of an arrangement on the matter to which it relates" is now for the first time made to this government. And I need hardly add, that if that dispatch had been communicated at the time of the arrangement, or if it had been known that the propositions contained in it and which were at first presented by Mr. Erskine, were the only ones, on which he was authorized to make an arrangement, the arrangement would not have been made.

As you have disclaimed any authority to offer explanations for the disavowal, as you have been willing to ascribe the want of such authority to the consideration that other channels had been preferred, and as you have even considered the circumstances under which the arrangement took place to be such as could only lead to a disavowal, and therefore as superseding the necessity of any explanation whatever, it is to be regretted, that you had not deemed it proper to render precise and explicit, that part of your letter which seems to imply that you had in our conversations, in relation to the affair of the Chesapeake, following the words of your instructions, held out not only the manner in which the reparation had been accepted, but even the form in which it had been tendered, as warranting his Majesty in even retracting the offer of reparation, and that you had elucidated the observation by a reference to the particular expressions which, at all events, put it totally out of his power to confirm any act containing them.

Whatever may have been your intention in this part of our conversation, or whatever may be the import of the passage to which I have just alluded, I have now the honor of signifying to you, that I am authorized to receive in a proper form whatever explicit explanations you may choose to make, with respect to the grounds of this part of the disavowal; and without enquiring whether your authority be derived from instructions that have been addressed to yourself, or that have devolved on you as the successor of the minister who had declined to execute them.

As you have, at the same time, been pleased to say that his Britannic Majesty had authorized you to renew the offer of satisfaction which Mr. Erskine was instructed to make, it was also naturally expected that you would in your letter have stated with precision in what that offer differed from the reparation solemnly tendered by Mr. Erskine and accepted by the United States, and that you would have shewn in what the reparation thus tendered differed from his instructions. And when I had the honor to intimate that, in order to avoid the misconceptions incident to oral proceedings, it was thought expedient that our further discussions on the present occasion should be in the written form, there was no part of the subject to which that intimation applied with more force than the case of the Chesapeake; none on which it was more desirable to avoid misconceptions and to obtain precise knowledge of the propositions which you were authorized to make, not only because I did not really understand the particulars of the offer as distinctly as you seem to have supposed, but also because, on that point, and on that alone, you had expressly stated that you had propositions to make, and

that you were authorized to carry them into immediate execution. On the subject of the orders in council, the President perceives with sentiments of deep regret, that your instructions contemplate, neither an explanation of the refusal of your government to fulfil the arrangement of that branch of the existing differences nor the substitution of any other plan of adjustment, nor any authority to conclude any agreement on that subject; but merely to receive and discuss proposals, that might be made to you on the part of the United States; and these, it appears, must include a stipulation on the part of the United States to relinquish the trade with the enemies' colonies, even in branches not hitherto interrupted by British orders for capture, and also a sanction to the enforcing of an act of Congress by the British navy.

Were the way properly opened for formal propositions from this government, a known determination on the part of his Britannic Majesty to adhere to such extraordinary pretensions would preclude the hope of success in such advances, whether regard be had to the conditions themselves, or to the disposition they indicate, in return for the conciliatory temper which has been evinced by the United States. As to the demand in relation to the colonial trade, it has been the less apprehended, as it is not in itself connected, nor has it ever before been brought into connection, either with the case of the orders in council, or with that of the Chesapeake. And it was reasonably to be presumed, if the idea of such a condition had in the first instance proceeded from the erroneous belief that it was not objectionable to the United States, that it would not have been persisted in after that error had been ascertained and acknowledged.

The other demand could still less have been apprehended. Besides the inevitable and incalculable abuses incident to such a license to foreign cruisers, the stipulation would touch one of those vital principles of sovereignty, which no nation ought to have been expected to impair. For where would be the difference in principle between authorizing a foreign government to execute, and authorizing it to make laws for us?—Nor ought it to be supposed that the sanctions and precautions of a law of the United States, in the cases of the prohibited trade in question, would prove inefficacious for its purposes.

Had none of these obstacles presented themselves to the course corresponding with the sentiments and dispositions of the President, I should have felt great pleasure in giving you formal assurances of his readiness to execute the conditional authority with which he is invested for restoring in its full extent, as far as it may depend on the United States, the commercial intercourse of the two countries, and that he would, moreover, be disposed to extend the experiment to a friendly negotiation to every point of difference and of mutual interest between them. If, indeed, in the event of a successful termination of what relates to the case of the Chesapeake, it be thought that a removal of the difficulties arising from the orders in council might be facilitated by comprehending them in a general negotiation and the operation of the orders can in the mean time be suspended, the door might be considered as immediately open to that course of proceeding.

To such a suspension no reasonable objection can be made, if, as you have stated, the orders in council as now modified leave the trade of the United States nearly as great as it would be without the existence of such orders, so long as France and the other powers shall continue their decrees, and inasmuch as a discontinuance of their decrees by those powers confessedly requires an immediate and entire revocation of the orders in council.

That a suspension of the orders with a view to their being brought into a general negotiation is more reasonable than a temporary submission to their authority, by the United States with that view, is obvious from the reflection that such a submission would necessarily involve a relinquishment of the principle which they have steadfastly asserted, whereas a discontinuance of the orders in council in the present actual state of things would not be incompatible with the principle on which they were originally founded.

This principle was, as you well know, the necessity of retaliating, through neutrals, injuries received through a violation of their rights by another belligerent. In the actual state of things, and under the actual modification of the orders in council produced by it, it is admitted by you, that the orders have no practical effect in abridging the commerce of neutrals, and can of course have no retaliating effect on the other belligerents.

Although it cannot be allowed to be true that the orders in council are no longer injurious to the commerce of the United States, it is certainly true that they produce no degree of injury to the enemies of Great-Britain that can countenance the retaliating plea alleged in support of them.

What, permit me to ask, is the degree of injury actually accruing to the enemies of Great-Britain from her retaliating orders? According to those orders, as now modified, and more especially taking into view along with them the prohibitory law of this country in relation to France, the essential difference between their repeal and their existence consists in this—that in the case of their repeal, as pledged by the arrangement of April, the trade of the United States might be carried on directly with the ports of Holland, whilst during their existence, as at present, it is to be carried on through the contiguous and neighboring ports. To your own calculations, Sir, I submit, whether the inconsiderable effect of this circuit on the prices in Holland and in the countries supplied through her, can any longer sustain the plea of inflicting distress on an enemy, or palliate the injuries done to a friend by a proceeding so contrary to his sentiments of justice, and which subject his regular commerce not only to inconvenient channels, but to all the abuses which may result from the suspicions, real or pretended, of interested cruisers. You cannot but be sensible, that a perseverance under such circumstances in a system, which cannot longer be explained by its avowed object, would force an explanation by some object not avowed. What object might be considered as best explaining it, is an enquiry into which I do not permit myself to enter, further than to remark, that in relation to the United States it must be an illegitimate object.

It remains to make a few observations which are due to the just interests of the United States, and which are invited by yours relating to the order in council of May last.

You seem to consider that measure as comprising the utmost precaution that was in the power of his Britannic Majesty to take, for preventing losses, from his disavowal of the engagement of your predecessor, to citizens of the United States, who had resumed their commercial pursuits on the faith of that act.

Without entering into a full view of the inadequacy of the order in that respect, I take the liberty of pointing out the following instances in which it falls essentially short of its declared intentions:

1. The order does not provide for the important case of vessels returning with cargoes from the ports of Holland.
2. The exemption from interruption of vessels bound from the United States to Holland was restricted by that order to such as should have departed prior to the 20th of July, at which date it is not certain that the order, which was not officially communicated until the 31st of that month, had even reached any one point of the United States. So that some vessels may have sailed between the limited date and the arrival of the order in the United States, and many from distant ports must have done so after its arrival, but before a knowledge of it had become general; all proceeding on the faith of the arrangement, yet all left by the order exposed to capture and condemnation.

3. The order does not provide for the important case of vessels, which had sailed on the like faith for Dutch ports other than those of Holland.

4. It does not include in its provisions the extensive list of vessels going indirectly from the United States, but directly from foreign ports to those of Holland, nor vessels trading entirely from foreign ports to Holland; and in both these instances proceeding on the faith of the arrangement professed to be respected within the defined period.

It is true, in these last instances the vessels were not to be captured without attempt, after contrary warnings, to proceed to those ports. But I need not remind you that the injuries incident to the delay and to the breaking up of such voyages cannot but have been considerable, and will have resulted as manifestly from the disappointed faith in the arrangement, as in the cases specially provided for, and consequently with all other losses fairly resulting from the same bona fide confidence in that act, they will fall within the just indemnification for which the principle, assumed in the order, is a formal pledge.

I conclude, Sir, with pressing upon your candid attention, that the least which the President could have looked for in consequence of the disavowal of a transaction such as was concluded by your predecessor and carried faithfully into effect by this government, was an explanation from yours of the disavowal, not through the minister disavowed, but through his successor—an explanation founded on reasons strong and solid in themselves, and presented, neither verbally, nor vaguely, but in a form comporting with the occasion, and with the respect due to the character and to the good faith of the disappointed party,—that it has been found with much concern and with not less surprize, that you are charged with no such explanations,—that you have apparently wished to bring the subjects, which have been formally and definitively arranged, into fresh negotiation, as if no such arrangement had taken place; that one of these cases thus slighted, viz. that of the frigate Chesapeake is a case for which reparation, not denied to be due, had been previously for long withheld, or rather in which the aggression itself has been spun out, to the present moment, by the continued detention of the mariners, whose seizure, making a part of the original hostility committed against the American frigate, must be regarded in a light analogous to a continued detention of the ship itself;—that in the other case, viz. that of the orders in council, you are not authorized to tender explanations for the disavowal, or to propose any new arrangement, nor to conclude any agreement, but solely to receive and discuss propositions which might be made to you, not concealing, at the same time, that to be satisfactory, they must include two conditions, both inadmissible,—one, altogether irrelevant to the subject, and the other requiring nothing less than a surrender of an inalienable function of the national sovereignty.

Notwithstanding these repulsive considerations, such is the disposition of the President to facilitate a final and comprehensive accommodation between the two nations, that he is ready, as I have already had the honor of signifying to you, to favor any mode of bringing about so happy an event that may be found consistent with the honor and the essential interest of the United States.

I have the honor to be, &c.
(Signed) R. SMITH,
The Honorable Francis James Jackson, &c. &c. &c.

(A.)
Extract of a letter from Mr. Pinkney to Mr. Canning, dated London, October 10, 1809.

"At our first interview (on the 29th June) verbal communications was not discontinued, but commended. For, after I had made myself understood as to the purpose for which the interview had been requested, you asked me if I thought of taking a more formal course, but immediately added that you presumed I did not, for that the course I had adopted was well suited to the occasion. My reply was in substance, that the freedom of conversation was better adapted to our subject and more likely to conduct us to an advantageous conclusion, than the constraint and formality of written intercourse, and that I had not intended to present a note. At the second interview (on the 22d July) it did not occur to me that I had any reason to conclude, and certainly I did not conclude, that verbal communication had not continued to be acceptable as a preparatory course, and it was not until the third interview (on the 29th July) that it was rejected as inadmissible."

(B.)
Extract from Mr. Canning to Mr. Pinkney, dated November 22, 1809.

"It is highly probable that I did not (as you say I did not) allign to you as the motive of the wish which I then expressed, my persuasion, that written communications are less liable to mistake than verbal ones; because that consideration is sufficiently obvious, and because the whole course and practice of office is, in that respect to established and invariable, that I really could not have supposed the assignment of any specific motive to be necessary to account for my requiring a written statement of your proposals previous to my returning an official answer to them.

"I had taken for granted all along that such would, and such must, be the ultimate proceeding on your part; however you might wish to prepare the way for it by preliminary conversations."

(C.)
Extract of a letter from Mr. Erskine to Mr. Smith, dated Washington, July 31, 1809.

"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 any vindication of my conduct (whatever I may have to offer) be of any importance further than as it might tend to shew, that my intention existed on my part to practice any deception towards the government of the United States."

From the same to the same, dated August 14, 1809.
"Under these circumstances, therefore, finding that I could not obtain the recognitions specified in Mr. Canning's (For the remainder see Supplement.)