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his government by his stipulations? The opinion of the most respectable writers on the law of nations, having been read, I need only refer to them; they concur in deciding that such a minister has no such power. The practice of the British government and of our government since its existence has been in strict conformity with this opinion. In every case where a minister resident has concluded a treaty, a special full power, or an authority separate and distinct from his general letter of credence, has been given. In the negotiation with Mr. Hammond, the British minister resident in 1791, his full powers were at the threshold demanded. Separate powers were granted to our ministers at London and France, under Washington and Adams; and to Mr. Monroe at London, under Mr. Jefferson; these cases all establish the same principle. In corroboration of all these authorities of law and usage, the administrators were reminded of the principle, and seem themselves to have entertained this opinion previous to bringing us into this dilemma. Mr. Pinkney writes from London, the first letter in the President's communication, (its date is not given) that he had suggested to Mr. Canning, "that it would be well (in case a special mission did not meet their approbation) that the necessary powers should be sent to Mr. Erskine." And the President informed us at the commencement of the last session of Congress, that "the British government had transmitted to their legation here, provisional instructions not only to offer satisfaction for the attack on the Chesapeake, to make known his Britannic majesty's disposition to send an envoy extraordinary with powers to conclude a treaty, but moreover to signify his willingness, in the mean time to withdraw his orders in council, in the persuasion, that the intercourse with Great Britain would be renewed on the part of the United States."

In opposition to all this, gentlemen oppose their assertion; Mr. Erskine had power to conclude the arrangement which he made. The gentleman from Virginia (Mr. Newton) shews that he had this power as minister resident, reads to us the opinion of Mr. Hammond, in his letter to Mr. Jefferson in 1791; that his general plenipotentiary character, and his recognition as such, "are authorities decidedly adequate to the commencement of a preliminary negotiation." This is admitted. Mr. Erskine had the same power to commence a preliminary negotiation; but he did more, he concluded an agreement; he concluded the agreement without producing any special, separate authority, giving him such power, nor does it appear any was demanded from him. Let us hear Mr. Secretary Smith in his defence upon this point. In his letter to Mr. Jackson, 19th October, he says of Mr. Erskine, "that he had, or at least, that he believed he had sufficient authority to conclude the arrangement, his formal assurances, during our discussion were such as to leave no doubt." And in his letter to Mr. Pinkney of 23d November, 1809, he says, "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 analogous to this case, did not consider any such distinct full power as necessary." As to the case of the adjustment of the British difference with Spain respecting Nootka Sound, I have not an intimate recollection of its circumstances, but I have recently recurred to the adjustment entered into by Mr. Fitzgerald, the British minister, and Count Florida Blanca, the Spanish minister, and in the declaration of the Spanish Secretary of State, that minister declares, that "being thereto duly authorized" he offers certain terms. The British minister in his counter declaration accepting the proposed terms of adjustment, declares, that he being thereto duly and expressly authorized, accepts the said declaration. And the "convention" signed 28th October, 1790, adjusting the dispute, in conformity to the previous declaration, states that the ministers "after having communicated to each other their respective full powers, have agreed upon the following articles, &c." and the convention concludes "that the said plenipotentiaries of his Britannic and Catholic Majesties have in their names and in virtue of their respective full powers, signed the present convention, and set thereto the seal of our arms."

If there is in this adjustment any thing which bears out the idea of our Secretary of State, that no "full power" was necessary to authorize Mr. Erskine to conclude his arrangement, I confess it has escaped my research. As to Mr. Erskine's opinion or assurance, that his powers were competent, and the entire reliance placed on such opinion and assurance, I feel humbled as an American, at the avowal by the administration, that they had relied upon the judgment of a foreign minister, as to the extent of his powers, instead of judging for themselves; that (for in fact it amounts to this) they had surrendered their understanding to the keeping of a British minister! The course of propriety and of duty was plain; they should have demanded his separate powers, or his special authority to conclude an arrangement; he must have produced them or the negotiation should have ended. His instructions are sacred and cannot be demanded, but if his powers and his instructions are contained in the same instrument, as in the case of Mr. Erskine, both must of necessity have been shewn. The British government were apprized of this and therefore au-

thorized him to communicate his instructions in extenso.

Sir, from a near and particular view of this affair I am compelled to conclude, and the conclusion is one from which I derive no pleasure, that the administration, in the arrangement with Mr. Erskine, have overlooked what it was their incumbent duty to have attended to; they have from indifference to consequences or ignorance of this duty, neglected to ascertain what were the powers or authority of Mr. Erskine; they have concluded a treaty with a man not authorized, and have made an arrangement "under circumstances which could only lead to the consequences which have followed," a disavowal by Great Britain. They stand convicted before the American people of having slumbered on their duty in this business, and to their misconduct or neglect are we indebted for this additional ground of difference with Great Britain, and all the consequences which may flow from it.

I have said, that a consequence of this want of attention was the right of Great Britain to disavow the arrangement. This is decided by my honourable colleague (Mr. Macon) who while he admits that a minister resident cannot without special authority conclude a treaty, yet contends this arrangement was not a treaty but an agreement or arrangement—in which ground he has been followed by the gentleman from Virginia (Mr. Epps.) My other colleague (Mr. Alston) denies it even to be an agreement, and says "it is only a promise by our administration to do one thing and a promise by Great Britain in consideration thereof to do another." This distinction between a treaty and an agreement or arrangement is not supported by any reasoning from the laws of nations. Vattel says, Sec. 153 "A treaty is a pact made with a view to the public welfare by the supreme power, either for a perpetuity or for a considerable time. Pacts with a view to transitory affairs are called agreements, conventions and pactions"—Sec. 206 "public pacts called conventions, articles of agreement, &c. when they are made between sovereigns differ from treaties only in their object. Treaties, conventions & agreements are all public engagements, in regard to which there is but one and the same right and the same rules"—nothing can make this exposition plainer. "A convention or arrangement between two governments is an agreement for the public welfare, differing from a treaty only as a simple contract differs from a deed or specialty; the object is less important, being "a transitory affair," therefore the contract is less solemn and less formal. Speaking of the disavowal, Mr. Smith in his letter to Mr. Jackson, quotes from Vattel, "to refuse with honour to ratify what has been concluded on by virtue of a full power, it is necessary that the sovereign should have strong and solid reasons and that he show in particular that his minister has deviated from his instructions." Vattel and Mr. Smith here agree that the principal is not bound by the act of his proxy, who deviates from his instructions; the rule of the civil law in Pothier insisted on by the gentleman from the Mississippi, to the contrary notwithstanding.) In the same section of this author it is said "the rights of the proxy are expressed in the instructions that are given him; he ought not to deviate from them; but every thing he promises within the terms of his commission and the extent of his powers binds his constituent," & Sec. 208. "If a public person, an ambassador or general of an army conclude a treaty or a convention without orders from his sovereign or without being authorized to do it by the power of his office, he goes beyond the bounds of his commission, & the treaty is null, as being made without a sufficient power."

It appears then that a minister resident, without a distinct, additional authority, called "a full power," cannot conclude a treaty—that Mr. Erskine had no "full power" for that purpose—that an arrangement respecting transitory affairs, such as that concluded with Mr. Erskine, is an agreement "regarding which there is but one and the same right and the same rules" as regards treaties; and being concluded "not only without authority but in direct opposition to the most precise instructions" as we have seen from the instructions themselves, the consequence by the law of nations is that the arrangement was null & not obligatory upon Great Britain. The resolution further states, that the rupture with Mr. Jackson was for the interest of the United States; to sustain this idea gentlemen in this debate assert that he offered & insisted on propositions which were insulting and originated in a hostile disposition, and that without acceding to such degrading conditions no treaty or adjustment of differences could have been made—Sir, there is a mistake in fact in all this; I will recall the attention of gentlemen to parts of the correspondence and documents before us which will shew how entirely incorrect is this statement.

Mr. Erskine has been introduced and relied on as a witness in this case by the administration; I may therefore, correctly I presume, appeal to his testimony for facts. The House will recollect that the three conditions which Mr. Erskine was instructed to propose to our administration, upon our assent to which Great Britain would revoke her Orders in Council as to the United States, which conditions are now deemed so highly insulting, were, 1st. That we should withdraw our non-intercourse and non-importation laws so far as respected Great Britain and continue them as to France

2d. That we should relinquish during the present war the colonial trade, from which we were excluded during peace, and 3d. That the British navy should aid in enforcing our non-intercourse law with France by capturing our vessels found violating the law.

The proposition contained in the first of those conditions was made by our administration to Great Britain in August 1807.—Congress have by law assented to it—and Mr. Erskine declares in his letter to Mr. Smith, 13 August, 1809, that Mr. Madison said if either Britain or France relaxed their restrictions upon neutral commerce "the U. S. would at once side with that power against the other which might continue its aggression."

The second condition Mr. Erskine says, page 18, Mr. Gallatin so far assented to as to say "he knew it was the intention of 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 to carry on such trade in peace, as to entitle them to a continuance of it in time of war." Mr. Erskine adds, that he supposed Mr. Gallatin to mean "the trade from the colonies of belligerents direct to their mother country or to 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, but had been recognised by his majesty's supreme court of admiralty." Mr. Erskine also says to Mr. Smith, (page 21) that during the negotiation which led to the conclusion of the provisional agreement, he found no reason to believe difficulties would occur in the accomplishment of the two former conditions, "as far as was in the power of the President as to the first, and from the duty of Congress to assert the rights of the United States against the powers who should adopt or act under the decrees of France," and that he "received assurances that no doubt could be entertained that a satisfactory arrangement might be made in a treaty upon the subject of the second condition, according to his explanation of it.

The origin of the two first conditions is thus settled—both are proved to have originated from the high, and if gentlemen please I will say, the pure source of our administration; the guardians of the honour and interests of our country. Whatever may be thought of their policy, gentlemen cannot I presume, consistently with justice to the British government and respect to our administration think them insulting, degrading, or hostile to our interests. As to the third condition the first trace we have of it is in the conversation of Mr. Canning and Mr. Pinkney on the eighteenth and twenty-second of Jan. as stated by Mr. Pinkney.

Mr. Canning, speaking of the proposal which had been made by the United States for the removal of the embargo as to Great Britain, asks, "in what way was the effectual operation of the embargo as to France after it should be taken off as to Great Britain to be secured? That our vessels, though cleared for Great Britain, would go to France, whatever penalties our laws might denounce against offenders, and he therefore presumed that the government of the United States would not object after it had itself declared a commerce with France, &c. illegal, and its citizens who should engage in it delinquents &c. after having given to Great Britain by compact an interest in the strict observation of the prohibition, complain if the naval force of this country should assist in preventing such commerce." Mr. Pinkney does not state any objections by him to this idea. Mr. Canning, (though it now appears erroneously conceived) that Mr. Pinkney assented to the stipulations; Mr. Erskine was therefore instructed to propose it.

Here was the origin of this third condition—it was suggested by Mr. Canning to Mr. Pinkney on the 22d of January—Mr. Pinkney did not object to it, its assent to it was therefore inferred though doubtless erroneously, since Mr. Pinkney says, 6th June, his observations "did not look to the admission of this object into any stipulation, he viewed it only as a consequence, that might and would, if France persisted in her unjust decrees, grow out of arrangements similar to those offered in August last."

As to the character of this third condition, degrading as its admission into a stipulation would be, neither our minister at London, nor our administration appear to have taken any alarm at this proposal; not even as conveying an "offensive insinuation." Mr. Erskine tells Mr. Smith, (page 21) "the third condition you certainly told me could not be recognised 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 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." Mr. Pinkney considered it as a consequence that would grow out of the arrangement, and Mr. Canning in his conversation with Mr. Pinkney 23d of June, as detailed by Mr. Pinkney in his letter of the 23d, says, "he had misapprehended Mr. Pinkney in January, that he was himself of opinion that the idea upon which that condition turned, could not well find its way into a stipulation—that he should have been satisfied with the rejection of it."

This is the history of these three conditions up to the arrival of Mr. Jackson in the U. States. The two first, if not suggested by, were at least approved of by members of our administration; the 3d originated in a misapprehension of Mr. Pinkney's conversation; its recognition was by Mr. Smith in his conversation with Mr. Erskine treated simply as "not important;" by Mr. Pinkney considered it barely as unnecessary as its operation would follow as a consequence of the adjustment proposed. But in August 1809, by Mr. Smith considered, and I agree justly so considered, as "irreconcilable to the dignity and interest of the U. S." It is a little strange that a mere proposition coming from Great Britain should excite the liveliest sensibility, when the actual execution of the same project by France, has been so far as we know silently acquiesced in! Sir, we all know France has a decree for enforcing our embargo by capture of all our ships found abroad during its continuance, as being in contravention of that law. The administration may have remonstrated against this decree of Napoleon as "irreconcilable with the dignity and interest of the United States." No evidence of such fact has been submitted to us. Under these circumstances of the case officially appearing before me, I cannot so far violate my feelings and my understanding, as to say, that the mere proposal of these three conditions was an insult to the U. S.

We are told in this debate repeatedly that a negotiation with Mr. Jackson would have been useless, as he insisted on the preliminary admission of the three degrading conditions. Sir, it is not strange that gentlemen should stumble upon the same mistake, over which our secretary seems so frequently to have broken his shins. It is not true that Mr. Jackson insisted on these conditions; the very reverse—his express and repeated declaration that he did not insist on them appears in the documents before us. It is certain that Mr. Smith, not less than three times in the correspondence, asserts that Mr. Jackson does insist on these conditions, & Mr. Jackson in his express disclaims any such demand.

On the 11th Oct. Mr. Jackson writes Mr. Smith, (page

72) "On the subject of his majesty's orders in council, I have had the honour of informing you that his majesty's command to be made to the government of the United States certain proposals founded on principles, some of which were understood to be such as to be American in their nature, and others to be such as to be British in their nature, and others to be such as to be common to both. I have afterwards explained in the manner mentioned in a former part of this letter, that the arrangements of the American government were so different from what they were at first intended to be, that I was not instructed to propose any such proposals, nor to press upon your administration any arrangement which had been so recently declined, especially as the arrangement itself is become less important and the terms of it less applicable to the state of things now existing."

In page 39, he says, "Such, &c. are the grounds on which it has appeared to his majesty to be unnecessary to command me to propose to the government of the United States any formal agreement to be substituted for that which his majesty has been under the necessity of dissolving; but I am directed to receive and discuss with you any proposal which you may be authorised to make on this point." Mr. E. continues, "As to the disposition of his majesty's ships on your part to state by stipulation, it has been impossible for me to make any such stipulation (nor was I instructed so to do) what might be the answer that I should eventually think it my duty to return to you; consequently I could not have made with this view the statement contained in the 4th section of your letter, and the three subdivisions of it. Such a statement would have been obviously inconsistent with the former part of my overture, which you very correctly record in the 3d section, viz. that I was not instructed to make any proposal whatsoever upon the subject."

Again, 4th November, page 68, Mr. Jackson writes Mr. Smith, "You say, that it is understood that his Britannic majesty perseveres in requiring an indispensable condition on the part of the United States, an entire relinquishment of the right to trade with the enemies colonies, and also a permission to the British navy to aid in executing a law of Congress. This same statement is contained in your letter of the 9th inst. and is repeated as the substance of what had fallen from me in our previous conferences. In my answer to that letter, I took the liberty of shewing that such a supposition was erroneous, and I have looked in vain to my letter of the 23d, to find in it any suggestion of a similar tenor. I believe, therefore, that by reference to my two letters you will find, that the statement not again brought forward is contained in neither of them, that it made no part of my previous conversations with you, that I have in no way given room to suppose, that I even made any such statement at all."

Language affords no terms of negotiation clearer than those employed by Mr. Jackson. He unequivocally denies insisting upon any previous conditions, or having made any proposals whatever. Yet gentlemen tell this House and the nation, that negotiation was useless, because Mr. Jackson insisted on the three conditions contained in Mr. Erskine's instructions! The testimony afforded us by the administration itself satisfies my mind that such a declaration is wholly founded in error.

Neither, sir, can I subscribe to the declaration contained in this resolution, that in the rupture with the British minister the administration have manifested a just regard to the interests of the United States. The interests of our country demand peace, as essential to the enjoyment of commerce and the Fruits of Agriculture, and as best suited to the dispositions of our people.—This rupture, far from securing, puts in jeopardy the peace of the country, without improving our means to sustain war, widens the breach already subsisting between G. B. and us, and interposes new obstacles to those already existing to a settlement—a result the very reverse of a just regard to the interests of the U. S.

We have been asked by the gentleman from Virginia (Mr. Epps) why are not our difficulties with G. B. settled? If the question had been why they were not now in a train of settlement, I should say because the administration rejecting overtures for negotiation have shut the door in the face of the messenger of peace.—On the 23d Oct. Mr. Jackson informs Mr. Smith that his instructions authorized him "to receive and discuss any proposal made on the part of the U. S. and eventually to conclude a convention between the two countries." And on the 4th Nov. he informs me that I informed you in a very early period of our communications, that in addition to the usual credential letter, his majesty had been pleased to invest me with a full power under the great seal of his kingdom, for the express purpose of concluding a treaty or convention, I will remember your testifying your satisfaction at the circumstance; and I have now only to add that I am ready, whenever it may suit your convenience, to exchange my full power against that with which you shall be provided, for the progress of our negotiation."

Here is a solemn declaration, that he had a "full power" to treat and conclude a treaty, and an offer to produce his power and enter on the negotiation whenever the secretary should appoint. If the sincerity of Mr. Jackson was doubted, the production of his authority was tendered and might have been inspected. Stress is laid on the word "eventually" as covering an ambiguity. This appears to me a refined quibble; to conclude "eventually" can only mean to conclude in the event of their agreeing upon terms. So like the word out, the expression is not stronger or more explicit; continue it, the force is not diminished, or rendered obscure. This refusal stands without explanation and without excuse.

"The case of the Chesapeake remains unsettled." Sir, no man more sensibly feels, and none would at greater hazards avenge the insult; and wrong, if atonement be improperly withheld, than myself. Why is it at this time undisturbed? The British minister, Mr. Erskine, offered an armistice, which our administration acknowledged to be satisfactory, and consented to accept. Yet the secretary of state, in the very act of acceptance, indulging a spirit of asperity, at least unnecessary at that stage of the business, not only expressed dissatisfaction at that stage of the business, but conveyed an unequivocal insult to the king of Great Britain. In his note accepting the terms offered, he adds, a different course would better have comported with the honour of his majesty! In plain English, Mr. Smith says, in a paper to be submitted for the sanction of the King, "The King has not acted as became a man of honour!" In private life, unquestionably such an acceptance of tendered satisfaction, would have compelled its attraction. We find therefore the king having rejected the arrangement, Mr. Jackson in his letter to Mr. Smith, of the 11th Oct. assigning the reasons for the rejection, declares his majesty, "was warranted in doing so both by the form in which the minister had tendered that reparation and by the manner in which that tender had been received"—that he had in conversation before, "referred to the particular expressions which made the terms appear unacceptable even to the American government, at the very moment when they were accepted, and which at all events puts it totally out of his majesty's power to ratify and confirm any act in which such expressions were contained."

Regarding the affair of the Chesapeake, Mr. Jackson made proposals for settling it; they were stated to be the same which Mr. Erskine was instructed to offer. But we are told these had been previously refused, and to have accepted them would have been disgrace. If this be granted, does it follow there would have been any degradation in again refusing them? To this hour the proposal remains unanswered. How shall a settlement ever be effected, if when an unacceptable proposition is made, the objections are not stated, so that others may be substituted? I understand not this policy, nor admire such pride when the great interests of a nation are at stake.

Some, sir, it appears that in this business of the rupture with Mr. Jackson, the best interests of the United States have been overlooked, or immolated on the altar of punctilio.

I conclude, sir, by declaring that in my opinion, this resolution is calculated to excite the feelings not only of the British monarch, but of a powerful people—that without fighting for battle, it tends to increase the animosity already unhappily existing; that it shuts the door to further negotiation; fixes a stain on the national character by condescending to use language unworthy a great people, and finally, I cannot but fear it will prove (if the gentleman from New York (Mr. Pink) will permit me the use of his figure) "the winding sheet" of the peace of this country.