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## DOCUMENTS.

### WHICH ACCOMPANIED THE MESSAGE OF THE PRESIDENT OF THE UNITED STATES.

MR. JACKSON TO MR. SMITH.

Washington, 27th Oct. 1809.

SIR, In reply to your letter of the 19th inst. that, understanding the frequent statements made by our conferences of the terms of satisfaction I am empowered to offer to this country the unauthorised attack made by one of the U. S. ships of war upon the frigate of the U. S. the Chesapeake, I have not had the good fortune to make myself distinctly understood by you. I have the honor to inclose herewith a paper containing the conditions on the subject of which I am ready to proceed to draw up the necessary official documents in the proposed in my letter of the 11th inst. or in other form upon which we may hereafter agree.

I have the honor to be,  
With great respect,  
Sir,

Your most obedient humble serv't,  
F. J. JACKSON.

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

The President's Proclamation of July, 1807, relating to British ships of war the entrance of the harbors of the U. States having been and his majesty is willing to restore the sea taken out of the Chesapeake on reserving to himself a right to claim, in a regular way, by apportion to the American government, the discharge of such of them (if any) as shall be proved either natural born subjects of his majesty's deservants from his majesty's service. His majesty is willing to make a provision for families of such men as were slain on board the Chesapeake, in consequence of the unauthorised attack upon that frigate, provided that such shall not be extended to the family of any who shall have been either a natural born subject of his majesty, or a deserter from his majesty's service.

MR. SMITH TO MR. JACKSON.

Department of State, Nov. 1, 1809.

Your letter of the 23d ult. which was received, would have been sooner acknowledged I not by sickness been rendered for several days utterly unfit for business.

Although the delay and the apparent reluctance in satisfying the grounds of the disavowal of the government with respect to the orders in council, do not correspond with the course of proceeding, yet most becoming the occasion; yet as the nation has at length been thus made, it only remains, as to that part of the disavowed arrangements, to request that such considerations should be allowed to outweigh the solid objection to the disavowal; it being understood at the time that his Britannic majesty perseveres in requiring as indispensable conditions on the part of the United States, and entire relinquishment of the right to trade with enemies colonies, also permission to the British navy to aid in executing a law of Congress; pretensions, which are not but tender abortive all proposals whatever on this subject, whether made by the United States, or by his Britannic Majesty.

Whilst you have deemed it proper to offer an arrangement with respect to the disavowal of one of the arrangements, I must remind you that it is not to be found in your letter any like indication of the reasons for the disavowal, nor particularly is it shewn that instructions were given, as to the other part, viz. the case of the Chesapeake; the case in which in an especial manner an explanation was required and in which you professed to have authority to make to government any overtures.

For the first time it is now disclosed that the orders, arranged with this government by your predecessor, are held not to be within the authority of a Minister Plenipotentiary, and that, not having had a "full power" distinct from that authority, his transactions on those subjects might be disavowed by his government. This measure, so contrary to every antecedent supposition and just inference, gives a new aspect to business. If the authority of your predecessor did not embrace the subjects in question, so as to bind his government, it necessarily follows, that the only credentials yet presented by you, are the same with those presented by him, giving no authority to bind it, and that the exhibition of a "full power" for that purpose, such as doubtless are furnished with, is become an indispensable preliminary to further negotiation; to speak more strictly, was required in the instance by the view of the matter now disclosed by you. Negotiation without this preliminary would not only be a departure from the principle of equality which is the essential basis of it, would moreover be a disregard of the precautions and of the self respect enjoined on the attention of the United States by the circumstances which have hitherto taken place.

Need scarcely add, that in the full power alluded to, as a preliminary to negotiation, is not intended to be included either the whole extent or part of your instructions for the exercise of it, of course, as you have justly remarked, relative to subject to your own discretion.

I abstain, sir, from making any particular allusions on several irrelevant and improper

allusions in your letter, not at all comporting with the professed disposition to adjust in an amicable manner the differences unhappily subsisting between the two countries. But it would be improper to conclude the observations to which I purposely limit myself, without adverting to your repetition of a language implying a knowledge on the part of this government that the instructions of your predecessor did not authorise the arrangement formed by him. After the explicit and peremptory asseveration that this government had no such knowledge, and that with such a knowledge no such arrangement would have been entered into, the view, which you have again presented of the subject, makes it my duty to apprise you, that such insinuations are inadmissible in the intercourse of a foreign minister with a government that understands what it owes to itself.

I have the honor to be, &c.

(Signed) R. SMITH.

The Hon. F. J. Jackson, &c. &c. &c.

MR. JACKSON TO MR. SMITH.

Washington, 4th Nov. 1809.

SIR, When I forwarded to my court your letter of the 19th ultimo, and the answer which I returned to it, I imagined, and I may add, I hoped, that the retrospective correspondence, into which you thought it necessary to enter with me had been closed. You will, no doubt, recollect with what reluctance I acquiesced in your intimation on this head; not, as I believe has been seen, in any difficulty in maintaining the justice of the cause which is entrusted to me, but because I was and still am of opinion, that this sort of correspondence is not calculated to remove differences and soothe the irritation of the most unfortunate tendency. As, however, I had no choice but to renounce, for the present, the hope of effectuating this desirable object, or to pursue it in the manner prescribed in your letter of the 9th ultimo, so I am now unwillingly compelled to enter upon the consideration of another letter from you under date of the 1st instant, which but too strongly confirms the opinion I before entertained.

Since, sir, it has been judged expedient to confine to a written form this important and interesting discussion; since that mode has been declared by you to be indispensable, I will first appeal to the written communications which have passed between us; and I do this with the greatest satisfaction, because I consider it to be the chief cause of the present remarkable state of things, that in speaking of engagements contracted or supposed to have been contracted between the two countries *understandings or implied engagements* have been allowed to take place of written contracts, and have been considered, in some instances, as having the same validity. It is furthermore necessary to place in the most unequivocal light a topic, which I observe to be constantly and prominently re-stated in your letters, notwithstanding the repeated but as it should seem, fruitless endeavors used in mine, to clear it from the slightest shadow of obscurity.

You say, "that it is understood that his Britannic majesty perseveres in requiring as indispensable conditions on the part of the U. 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 represented 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 now again brought forward is contained in neither of them, that it made no part of my previous conversations with you, and that I have in no way given room to suppose, that I ever made any such statement at all.

That before the orders in council can be revoked, their object must be obtained in some other way, is unquestionably true; but you may be assured, sir, that there is no wish whatever entertained in England, that the British navy should be employed in executing a law of congress.—If the proposal that was made upon that subject, and made, as you now know, because it was believed to be acceptable here, had been adopted, and had become a matter of compact between the two countries, and thereby a part, not of the law of congress, but of the public law binding upon both parties, and which both would have had a common interest in seeing duly executed; in that case the agency of the British navy would not have had the invidious aspect which is now attempted to be given to it.—At present there is no engagement between the two countries, no laws of congress which bear a reference to any such engagement, and consequently it cannot be wished to take any share whatever in the execution of those laws.

In regard to the colonial trade I need only observe, that all or nearly all the enemies colonies are blockaded by British squadrons; it cannot therefore be so much an object of solicitude, as you imagine, to obtain the relinquishment of the trade of any country to those colonies. On the contrary you will find it stated in my letter of the 11th ultimo, to be a "matter of indifference whether the order in council" (on this subject)

be continued, or an arrangement by mutual consent substituted in its room."

When I informed you that the agreement concluded there in April last, had been framed in deviation from the instruction given for the occasion, my explanation was intended to apply to both parts of that agreement.—That nothing required by the most scrupulous accuracy, may be wanting, I now add, the deviation consisted in no recording in the official document signed here, the abrogation of the President's proclamation of the 2d July, 1807, as well as the two reserves specified in the paper of memoranda enclosed in my official letter to you of the 27th ultimo.

There is another motive for the disavowal of this part of the arrangement, considered to be so strong and so self evident upon the very face of the transaction, that I am not commanded to do more than indicate it in the manner I have already done.—By this forbearance his majesty conceives that he is giving an additional pledge of his sincere disposition to maintain a good understanding with the U. States.

I am somewhat at a loss to give a distinct reply to that part of your letter which relates to Mr. Erskine's authority to conclude with you in virtue of his general letter of credence, because I do not very distinctly understand the tendency of it. I never before heard it doubted that a full power was requisite to enable a minister to conclude a treaty, or that a mere general letter of credence was insufficient for that purpose.

If it were otherwise, and a government were in all cases to be bound by the act, however unauthorised, of an accredited minister, there would be no safety in the appointment of such a Minister, and ratifications would be useless.—No full power was given in the present case, because it was not a treaty, but the materials for forming a treaty that was in contemplation.

In his dispatch of the 23d of January, Mr. Secretary Canning distinctly says to Mr. Erskine—"Upon receiving through you on the part of the American government a distinct and official recognition of the three abovementioned conditions his majesty will lose no time in sending to America a minister fully empowered to consign them to a formal and regular treaty."

This minister would, of course, have been provided with a full power; but Mr. Erskine was to be guided by his instructions, and had the agreement concluded here been conformable to them, it would without doubt have been ratified by his majesty. I must beg your very particular attention to the circumstance that his majesty's ratification has been withheld, not because the agreement was concluded without a full power, but because it was altogether irreconcilable to the instructions on which it was professedly founded. The question of the full power was introduced by yourself, to give weight, by a quotation from a highly respected author, to your complaint of the disavowal, in answer to which I observed that the quotation did not apply, as Mr. Erskine had no full power. Never did I imagine, or any where attempt, to raise the right of disavowal upon that circumstance.—Indubitably his agreement would, nevertheless, have been ratified, had not the instructions, which in this case took the place of a full power, been violated.

I am surprised at the transition by which it appears to you that this part of the subject is connected with the authority empowering me to negotiate with you. It will not, I dare say, have escaped your recollection that I informed you at 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 well remember your testifying your satisfaction at the circumstance; and I have only now to add that I am ready, whenever it suits your convenience, to exchange my full power against that with which you shall be provided, for the progress of negotiation.

I am concerned, sir, to be obliged a second time to appeal to these principles of public law under the sanction and protection of which I was sent to this country. Where there is not freedom of communication in the form substituted for the more useful intercourse between ministers; and one, at least, of the epithets which you have thought proper to apply to my last letter is such as necessarily abridges that freedom. That any thing therein contained may be irrelevant to the subject it is of course competent in you to endeavour to shew and as far as you succeed in so doing, in so far will my argument lose of its validity—but as to the propriety of my allusions, you must allow me to acknowledge only the decision of my own sovereign, whose commands I obey, and to whom alone I can consider myself responsible. Beyond this it suffices that I do not deviate from the respect due to the government to which I am accredited.

You will find that in my correspondence with you, I have carefully avoided drawing conclusions that did not necessarily follow from the premises advanced by me, and least of all should I think of uttering an insinuation, where I was unable to substantiate a fact.—If facts, such as I have become acquainted with them, I have scrupulously adhered, and in so doing I must continue, whenever the good faith of his majesty's government is called in question, to vindicate its honor and dignity in the manner that appears to me best calculated for that purpose.

I have the honor to be, &c.

F. J. JACKSON.

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

MR. SMITH TO MR. JACKSON

Department of State, Nov. 8, 1809.

SIR—In my letter of the 19th ult. I stated to you that the declaration in your letter of the 11th, that the despatch "from Mr. Canning to Mr. Erskine of the 23d January, was the only despatch by which the conditions were prescribed to Mr. Erskine, for the conclusion of an arrangement on the matter to which it related, was then for the first time made to this government." And it was added, that if that despatch had been communicated at the time of the arrangement, or if it had been known that the propositions contained in it were the only ones on which he was authorised to make an arrangement, the arrangement would not have been made.

In my letter of the 1st instant, adverting to the repetition in your letter of the 23d ult. of a language implying a knowledge in this government that the instructions of your predecessor did not authorize the arrangement formed by him, an intimation was distinctly given to you, that after the explicit and peremptory asseveration that this government had not any such knowledge, and that with such a knowledge such an arrangement would not have been made, no such insinuation could be admitted by this government.

Finding that in your reply of the 4th instant, you have used a language which cannot be understood but as reiterating and even aggravating the same gross insinuation, it only remains in order to preclude opportunities which are thus abused, to inform you that no further communication will be received from you, and that the necessity of this determination will, without delay, be made known to your government.—In the mean time a ready attention will be given to any communications affecting the interest of the two nations, through any other channel that may be substituted.

I have the honor to be, &c.

R. SMITH.

The Hon. F. J. Jackson, &c. &c. &c.

Message from the President of the United States transmitting Extracts from the correspondence of Mr. Pinkney.

To the House of Representatives of the United States.

"Agreeably to the request expressed in the resolution of the 13th inst. I lay before the House extracts from the correspondence of the minister plenipotentiary of the United States at London.

JAMES MADISON.

December 16, 1809."

Brief account of an unofficial conversation between Mr. CANNING and Mr. PINKNEY, on the 18th of January, 1809, continued on the 22d of the same month. [Transmitted by Mr. Pinkney to the Secretary of State.]

I dined at Mr. Canning's with the corps diplomatique, on the 18th January. Before dinner he came up to me, and entering into conversation, adverted to a report which he said had reached him that the American ministers, (here and in France) were about to be recalled. I replied, that I was not aware that such a step had been resolved upon. He then took me aside, and observed that, according to his view of the late proceedings of Congress, the resolutions of the House of Representatives, in committee of the whole, appeared to be calculated, if passed into a law, to remove the impediments to arrangement with the United States, on the subjects of the orders in council and the Chesapeake, by taking away the discrimination between Great Britain and France in the exclusion of vessels of war from American ports. He added that it was another favorable circumstance that the non-impertation system, which seemed to be in contemplation, was to be applied equally to both parties, instead of affecting as heretofore Great Britain alone.

I proposed to Mr. Canning, that I should call on him in the course of a day or two for the purpose of a free communication upon what he had suggested. To this he readily assented; and it was settled that I should see him on the Sunday following (the 22d) at 12 o'clock, at his own house.

In the interview of the 22d, Mr. Canning's impressions appeared to be in all respects the same with those which he had mentioned on the 18th; and I said every thing which I thought consistent with candor and discretion to confirm him in his disposition to seek the re-establishment of good understanding with us, and especially to see in the expected act of Congress, (if it should pass) an opening for reconciliation.

It was of some importance to turn their attention here, without loss of time, to the manner of any proceeding that might be in their contemplation. It seemed that the resolutions of the House of Representatives, if enacted into a law, might render it proper, if not indispensable, that the affair of the Chesapeake should be settled at the same time with the business of the orders and embargo, and this I understood to be Mr. Canning's opinion and wish. It followed that the whole matter ought to be settled at Washington, and, as this was moreover desirable on various other grounds, I suggested 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.

In the course of the conversation, Mr. Canning proposed several questions relative to our late proposal: the principal were the two following:

1. In case they should wish either through me or through Mr. Erskine, to meet us upon the basis of our late overture, in what way was the effectual operation of our embargo as to France,