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STATE PAPERS.

Great Britain & America.

Despatches from Mr. Secretary Canning and the Hon. D. Erskine.

(Laid before Parliament.)

CONTINUED.

Despatches from Mr. Secretary Canning to the Hon. D. Erskine, dated Foreign Office, January 23, 1809.

If there really exists in those individuals, who have a leading share in the new administration of the United States, that disposition to a complete and cordial understanding with Great Britain, of which you have received such positive assurances; in meeting this disposition it would be useless and unprofitable to a recapitulation of the causes from the differences between the two countries, or of the arguments already so often in support of that system of retaliation which his majesty has unwillingly had recourse to maintain, unless the object of it can be accomplished.

After a profession on the part of so many members of the government of the United States of a sincere desire to contribute to that object in a manner which would render the continuation of the system adopted by the British government unnecessary, it is thought that a fair opportunity should be afforded to the American government to explain its meaning, and to give proof of its sincerity.

The extension of the interdiction of the American ports to the ships of war of France as well as Great Britain, is, as stated in my other despatches, an acceptable symptom of impartiality to the belligerents; the first that has been manifested by the American government. The extension of the non-importation act to the belligerent, is equally proper in this respect. These measures remove those preliminary objections which must otherwise have precluded an amicable discussion. In this state of things, it is possible for Great Britain to enter into propositions which, while such manifested by her enemies, were not either with her dignity or her interests. In the report of your conversations with Mr. Gallatin and Mr. Smith, it ap-

pears that the American government is prepared in the event of his majesty's consenting to the orders in council of January and November 1807, to withdraw contemporaneously on the interdiction of its harbors to ships of all non-intercourse and non-importation laws as respects Great Britain, leaving force with respect to France, and the which adopt or act under her decrees:

What is of the utmost importance, as presenting a new source of misunderstanding which arises after the adjustment of the other questions, is the pretension of carrying on in war, all trade with the enemy's colonies, which she was excluded during peace:

Great Britain, for the purpose of securing the execution of the embargo, and of the bona fide prohibition of America to prevent her citizens trading with France and the powers acting under the French decrees, is to be regarded as being at liberty to capture all such vessels as may be found attempting to trade with the ports of any of those powers; with full security for the observance of the embargo, the raising it nominally with respect to Britain alone, would in fact raise it with respect to all the world.

These conditions his majesty would consent to draw the orders in council of January and November 1807, so far as respects America.

The first and second of these conditions are the persons in authority in America, and Mr. Finkney has recently (but for the first time) expressed his opinion that there is no indisposition on the part of his government to the enforcement of the naval power of Great Britain, and the countries to which those regulations continue to apply, but that his government was itself aware that, without such enactment, those regulations must be altogether inoperative. I flatter myself that there will be no difficulty in obtaining a distinct and official recognition of these conditions from the American government.

In this purpose you are at liberty to communicate this despatch, *in extenso*, to the American government.

Receiving through you, on the part of the American government, a distinct and official recognition of the three above mentioned conditions, his majesty will lose no time in sending to America a minister fully empowered to consign them to a regular treaty.

However, it is possible that the delay which may intervene before the actual conclusion of a treaty may appear to the American government to be a disadvantage. I therefore authorize you, if the American government should be desirous of acting upon the agreement, to reduce it to a regular form, either by an immediate repeal of the embargo, and the withdrawal in question, or by engaging to repeal it on a particular day, to assure the American government of his majesty's readiness to meet the disposition in the manner best calculated to produce its immediate effect.

Upon the receipt here of an official note, containing an agreement for the adoption, by the American government, of the three conditions above specified, his majesty will be prepared on the faith of such engagement, either immediately (if the repeal shall have been immediate in America) or on any day specified by the American government for that purpose, reciprocally to repeal the orders of council, without waiting for the conclusion of a treaty.

And you are authorized in the circumstances herein described, to make such reciprocal engagement on his majesty's behalf.

I am, &c.

(Signed) GEORGE CANNING.

No. 4.—Despatch from Mr. Secretary Canning to the Hon. David Erskine, dated Foreign Office, Jan. 23, 1809.

Sir—In your despatch, No. 47, among the other important suggestions which you state yourself to have received from Mr. Gallatin, is one, the purpose of which is, that supposing all the existing differences between the two countries to be done away, the system of their commercial intercourse might be better regulated by the short and simple agreement, either to admit each others productions on equal and reciprocal to place each on the footing of the most favored nation, than by any more minute and complicated provisions.

The sentiments on which this suggestion appears to be founded are so much in unison with those entertained here, that I am to direct you, in the event of the subjects mentioned in my despatches being put in a train of adjustment, to endeavor to obtain from the American government some more precise and authentic exposition of their view upon this subject, to be transmitted here for consideration, if possible, at the time with their answers upon the subjects of those other despatches.

It will not, however, be desirable that those answers should be delayed for this purpose.

But you are authorized to assure the American government of the readiness which we shall be prepared to enter into the amicable discussion of the commercial relations of the two countries, on the basis of the latter of the two principles proposed by Mr. Gallatin, whenever these obstacles which stood in the way of the renewal of their intercourse, shall have been happily removed.

In this case, as in respect to the subject of my other despatches, you will see that the sincerity of the good disposition professed by the persons composing the new administration, is the point the most important in the view of the British government.

If such a disposition really exists all difficulties will (as Mr. Gallatin has expressed himself) be easily smoothed away.

If unfortunately this hope should be disappointed, Great Britain has only to continue the system of self defence and retaliation upon her enemies, to which she has been compelled to have recourse with the consciousness of having eagerly seized the first opportunity that appeared to be offered to her, of obtaining through an amicable arrangement with America, the object for which the system was established. I am, &c.

(Signed) GEORGE CANNING.

No. 12.—Despatch from the Hon. David Erskine to Mr. Secretary Canning, dated Washington, April 20, 1809.

Sir—As the instructions contained in your despatches, Nos. 1 and 2, directed me to regulate my conduct in making propositions on the part of his majesty to this government, according to the general disposition which might be shewn by them to come to a complete and cordial understanding with Great Britain—I accordingly used all my efforts to discover whether the professions of such a disposition which had been so often repeated to me unofficially and lately in the most formal manner, were sincere. The result of further communication persuaded me, that the sentiments of this government had been truly represented to me, and I was confirmed in that opinion by the favorable reception of the reparation tendered by his majesty for the affair of the Chesapeake; the details of which I have given in my preceding number.

With this conviction upon my mind, I examined, with the greatest attention, the tenor of your instructions, contained in your despatch No. 1, and particularly the three conditions upon which his majesty was willing to withdraw the orders in council of Jan. and November, 1807, as respects the United States.

The first of them I considered would be of course officially recognized by the American government, since the 14th section of the Act of Congress, usually termed the Non-Intercourse Act, provided for such a contingent proposition.

The second condition named by you, I knew would be acquiesced in; not only from the declaration which had been made to me by most of the members of this government, but from the universal opinion of the members of weight and influence of both houses of congress, that the principle and object sought to be established by that rule were equitable, and would ever be insisted upon by Great Britain.

I foresaw, however, that a difficulty must arise in obtaining a formal recognition on that point without any reference to the other commercial arrangements, which would form the basis of a regular treaty.

The third condition, it was obvious, could not be objected to, because an American owner of a vessel captured by a British cruiser, on account of

its destination to France, or to any other country with which intercourse was prohibited by the laws of the United States, could not complain to this government of such seizure, as the only answer would be, that the enterprise being illegal, he had no claim to redress.

Upon my submitting the three conditions to the consideration of the secretary of state, he made the answer to the first which I had anticipated, namely, that the president would of course assent to it, and in pursuance of the power vested in him by the congress, would issue a proclamation for that purpose, to take effect on the same day that the orders in council should cease to operate as respects the United States.

With regard to the second, he said, although he was persuaded that no difficulty would arise in the adjustment of that point, conformably to views of his majesty's government, when the various articles of a commercial treaty should be brought under discussion, yet it was impossible for the American government to give an official recognition of that principle as a previous step, because there was no commerce of any kind, at present, permitted by the laws of the United States, to be carried on with France or her dependencies; and that the question therefore must necessarily be long to another state of things, or remains to be adjusted by treaty.

The third condition, Mr. Smith observed, appeared to him to require no recognition, since it was evident that the interference of the government of the United States could never be recognized by any of its citizens for redress for an injury sustained in consequence of a direct breach of the laws; and that in the event of any such appeal being made the only answer given would be, that the government would immediately order the bonds of the petitioner to be put into execution against him for a violation of the laws.

He stated, however, that the circumstance of the government of the United States stipulating that Great Britain should be allowed to execute their laws would be degrading, and attended with no advantages to the latter.

Under these circumstances, it became my duty to consider whether the spirit of your instructions would be accomplished by my obtaining an official recognition on the part of this government of the first condition, and an understanding respecting the two others, in conformity with the views of his majesty's government, though not given in a formal manner (for reasons before detailed,) or whether it was incumbent on me to forbear from making any proposition, as I could not obtain a compliance with the exact letter of your instructions.

Various considerations of great weight urged me to endeavor to bring about an adjustment of the differences between the two countries, upon the points entrusted to my discretion, as far as it was possible, without departing from the orders I had received.

The strongest inducement was derived from the communications which I had lately received from Mr. Smith, of the dissatisfaction of the French minister here with the non-intercourse act, the particulars of which I have given in my No. 17, also from the general aspect of the relations of this country with Great Britain & France, as detailed in my No. 17 and 18, and in some previous despatches.

The circumstance of the congress being about to assemble very shortly, was another reason for wishing to have an amicable arrangement concluded; since the majority of both houses had pledged themselves to a resistance of the restrictions upon neutral commerce, if it could be pointed against either of the two great belligerent powers separately, and that it was only on account of the impossibility of any successful effort being made, that they were prevented from ascertaining their rights against both during the last session.

As this government thought that any longer delay in the time for the renewal of the intercourse between Great Britain and the United States would deprive such an arrangement of many of its mutual advantages, and fully agreed in that opinion, a day certain (the 10th of June next) was accordingly fixed upon.

The notes which passed between the secretary of state and myself, and which I have now the honor to inclose (marked A, B, C, D.) will explain the course pursued in the arrangement that was concluded.

Should his majesty's government consider that I have exceeded the limits of my instructions in the engagement I have made on his majesty's behalf, I am aware that no advantages which might be derived from it to Great Britain could justify my conduct.

I therefore rest my vindication upon the reasons detailed in the foregoing part of this despatch; for believing that I have adhered to the spirit, and, as far as I could, to the letter of my orders; but I place my chief reliance on the well known liberality of his majesty, in appreciating the conduct of his servants.

I will only beg leave to remark, that the agreement has been concluded in the persuasion that an amicable understanding would be settled by the special mission, and with a view to promote so desirable an object.

Should unexpected difficulties occur in forming a treaty, or should his majesty's envoy extraordinary find reasons to doubt the friendly disposition of the United States, it will then rest with his majesty to take such measures as may be deemed proper, according to the actual state of things. In the mean time no injury can be derived, I

conceive from that conditional agreement, I have the honor to be, &c.

(Signed) D. M. ERSKINE.

Despatches from Mr. Secretary Canning, to the Hon. David Erskine, dated Foreign Office, May 22, 1809.

Sir—Your despatches, Nos. 19 and 20, of the 19th and 20th of April, have been received here this day, and laid before the king.

I have lost no time in receiving his majesty's commands on the manner in which you have executed the instructions conveyed to you in my despatches by Mr. Oakley.

It is much to be regretted, that in the execution of instructions upon points of so much delicacy and importance, you should have thought yourself authorized to depart so widely not only from their letter, but from their spirit.

With respect to the instructions relating to the Chesapeake, which from the subject of my despatch, No. 1, I have to remark, 1st, the total omission by you of a preliminary of the most material importance, 2dly, a departure from the terms of your instructions in the manner of conducting the negotiation; and 3dly, the admission by you, and so far as appears, without remonstrance or observation of a note containing expressions offensive to his majesty's dignity, such as no minister of his majesty ought to have submitted to receive, and to transmit to his government.

1st. It is distinctly stated by me as the condition of his majesty "no longer insisting upon the repeal of the proclamation of July 1807, as a preliminary to the adjustment of the difference arising from the affair of the Chesapeake," that the ships of war of France shall, in point of fact, have been excluded from the ports of the United States, and such ships of that description as were in those ports, shall have been warned to depart."

Of this condition you appear to have taken no notice whatever. The non-intercourse bill operated only to the prospective exclusion; but as to the warning to be given to any ships of war of France (if any such there were) in the ports of the United States, it is nowhere appears that even a question was put by you on this subject, much less that you received any satisfactory assurance upon it.

2dly. But if this preliminary condition had been fulfilled, your instructions proceeded to state, that even then, "it would still be necessary that either the proclamation should be withdrawn or its operations formally declared to be at an end," though it would be sufficient that such withdrawal or declaration should be recorded in the same instrument, or at the same time with the terms of reparation."

So far from this indispensable condition having been obtained by you, Mr. Smith in the answer by him to your note, studiously avoids any thing like a recognition of the principle on which alone the demand of the formal repeal of the proclamation was to be waved; neither is the proclamation itself withdrawn, nor its operation declared to be at an end.

The obvious consequence of this omission is, that if the non-intercourse act, which is a temporary act, were to be suffered to expire, the proclamation might revive, and the inequality between the two belligerents be thereby restored.

It was obviously your duty, before you committed his majesty's name by a written offer of reparation, to ascertain in what manner that offer be received, and answered; and if you found that the express condition, either of the withdrawing the proclamation, or declaring its operation to be at an end, would not be complied with, to abstain from proceeding one single step in the negotiation until you had referred home for further instructions.

That part of your instructions which I direct that this arrangement, should be settled by the exchange of ministerial notes dated on the same day, and reciprocally delivered at the same time, was expressly intended to guard against the possibility of your committing yourself by a written proposal, in the uncertainty of what might be the nature of the answer to be returned to it.

His majesty will not suppose it that Mr. Smith's intended answer can have been communicated to you previously, and have obtained your approbation.

In the proposal for restoring the men taken from on board the Chesapeake, it was not intended, that the condition of his majesty's right to reclaim them in a regular way from the American government, if either natural born subjects of his majesty, or deserters from his majesty's service should have been omitted. I dwell however the less on this point, as his majesty's right, in this respect, is founded on public law, and does not require to be fortified by the recognition of any other government.

But I cannot forbear observing with regret that the bounty of his majesty, in the intended proposition for the relations of the men killed on board the Chesapeake, is not only stated by you to be a similar restriction, but is brought forward as one as a part of the reparation originally offered; and thus converted by you from an act of spontaneous generosity, into one of the positive obligations.

3dly. In addition to the substance of Mr. Smith's note, which I have already mentioned, it remains for me to notice the expressions of full disrespect to his majesty, with which that note concludes. And I am to signify to you the displeasure which his majesty feels, that any