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## Public Documents.

### DOCUMENTS

Accompanying the Message of the President, to Congress, Nov. 5, 1811.

Consequence of the subject of the Orders in Council. (CONTINUED.)

MR. FOSTER TO MR. MONROE.

Washington, July 11, 1811.

SIR,

In consequence of our conversation of yesterday, and the observations which you made respecting the subject of my letter to you of the 3d inst., wherein I have alluded to the principle on which his Majesty's orders in Council were originally founded, I think it right to explain myself in order to prevent any possible mistake as to the present situation of neutral trade with his Majesty's enemies.

It will only be necessary for me to repeat what has already, long since, been announced to the American government, namely, that his Majesty's order in Council of April 26, 1809, superseded those of November, 1807, and related the system of retaliation adopted by his Majesty against his enemies from what was considered in this country as the most objectionable part of it; the option given to neutrals to trade with the enemies of Great Britain through British ports on payment of a transit duty.

This explanation, sir, will, I trust, be sufficient to disavow any impression that you may have received to the contrary from my observations respecting the effects his Majesty's orders in Council originally had on the trade of neutral nations. Those observations were merely meant as preliminary to a consideration of the question now at issue between the two countries.

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

AUG. J. FOSTER.

To the Hon. James Monroe, &c.

MR. FOSTER TO MR. MONROE.

Washington, July 14, 1811.

SIR,

Packet Boat having been so long detained having elapsed since my letter to you of the 11th inst., that I should have thought it necessary to have explained to you the line of conduct which his Majesty's government mean to pursue. I trust you will excuse me, sir, if without pressing into detail the details of the subject, I merely state to you what you wish to know, and which I have already addressed to the late Act of Congress prohibiting all importations from the British Dominions.

There have been repeated avowals lately made by the government of France, that the decrees of Berlin and Milan were still in full force, and the acts of government have corresponded with those avowals.

The measures of retaliation passed by Great Britain against those decrees are consequently to the great regret of His Royal Highness still necessarily continued.

I have the honor to state to you the light in which His Royal Highness the Prince Regent viewed the proclamation of the President of last November, and the surprise with which he learnt the subsequent measures of Congress against the British trade.

American ships seized under His Majesty's Orders in Council, even after that Proclamation appeared, were not immediately condemned, because it was believed that the mischievous professions of France might have led the American government and the merchants of America into an erroneous construction of the intentions of France.

But when the veil was thrown aside, and the French ruler himself avowed the continued existence of his invariable system, it was not expected by His Royal Highness, that America would have refused to retract the steps she had taken.

Fresh proofs have since occurred of the resolution of the French government not to cast away all consideration of the rights of nations in the unprecedented warfare they have adopted.

America, however, still persists in her injurious measures against the commerce of Great Britain, and His Royal Highness has in consequence been obliged to look on as an insult against those measures which His Royal Highness cannot but consider as most unjustified.

How desirable would it be, sir, if a stop could be put to any material progress in such a system of retaliation, which, from step to step, may lead to the most unfriendly situation between the two countries?

His Majesty's government will necessarily be guided in a great degree by the contents of my first dispatches as to the conduct they must adopt towards America.

Allow me then, sir, to repeat my request to learn from you whether I may not convey to His Royal Highness what I know with respect to the situation of his Majesty's orders in Council, and the hope that he may be enabled by the information of America from her official publications, to discontinue the measures which he has taken against Great Britain, to forego altogether the system of retaliation, and to endeavor to establish a mutual understanding possible between the two countries.

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

AUG. J. FOSTER.

To the Honorable James Monroe, &c. &c. &c.

MR. FOSTER TO MR. MONROE.

Washington, July 16, 1811.

SIR—I had the honor to receive the letter you addressed to me under yesterday's date, requesting an explanation from me. No consequence of my letters of the 3d and 14th inst. of the precise extent in which a repeal of the French decrees by his Majesty's government made a condition of the repeal of the British orders, and particularly whether the condition embraces the seizure of vessels and merchandize entering French ports in contravention of French regulations, as well as the capture on the high seas, of neutral vessels and their cargoes, on the mere allegation that they are bound to or from British ports, or that they have on board British productions or manufactures; as also, stating that in your view of the French decrees, they comprise regulations essentially different in their principles, some of them violating the neutral rights of the United States, others operating against Great Britain without any such violation.

You will permit me, sir, for the purpose of answering your questions as clearly and concisely as possible, to bring into view the French decrees themselves, together with the official declarations of the French minister which accompany them. In the body of those decrees, and in the declarations alluded to, you will find, sir, expressions which state the principles on which they were founded, and the provisions contained in them, are wholly new, unprecedented, and in every respect a violation of all ideas of justice and the principles of usages of all civilized nations.

The French government did not pretend that any one of the regulations contained in those decrees was a regulation which France has ever been in the practice of making.

They were consequently to be considered, and were indeed allowed by France herself to be, all of them, parts of a new system of warfare, unauthorised by the established laws of nations.

It is in this light in which France herself has placed her decrees, that Great Britain is obliged to consider them. The submission of neutrals to any regulations made by France, in consequence of the seizure of her ships, or other wars, will never be contemplated by Great Britain; but the neutral decrees of Berlin and Milan do not and need not violate the laws of nations and the rights of neutrals, for the purpose of attacking through them the resources of Great Britain. The ruler of France has drawn no distinction between any of them, nor has he declared the cessation of any one of them in the speech which he so lately addressed to the late Imperial Runic Towns, which was on the contrary a confirmation of them all.

Not until the French decrees therefore shall be effectually repealed, and thereby neutral commerce be restored, or the situation in which it stood previously to their promulgation, can his Majesty conceive himself justified consistently with what he owes to the safety and honor of Great Britain, in foregoing the just measures of retaliation which his Majesty in his defence was necessitated to adopt against them.

I trust, sir, that this explanation in answer to your enquiries will be considered by you sufficiently satisfactory; should you require any further, and which it may be in my power to give, I shall with the greatest cheerfulness afford it.

I sincerely hope, however, that no further delay will be thought necessary by the President in restoring the relations of amity which subsist between America and Great Britain, as the delusions attempted by the government of France have now been made manifest, and the pernicious plans of its ruler exposed; by which, while he adds to and aggravates his system of violence against neutral trade, he endeavors to throw all the odium of his acts upon Great Britain, with a view to engender discord between the neutral countries, and the only power which stands up as a bulwark against his efforts at universal tyranny and oppression.

Excuse me, sir, if I express my wish as early as possible to despatch his Majesty's packet-boat with the result of our communications, as his Majesty's government will necessarily be most anxious to hear from me. Any short period of time, however, which may appear to you to be reasonable, I will not hesitate to detain her.

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

AUG. J. FOSTER.

To the Hon. James Monroe, &c. &c. &c.

MR. MONROE TO MR. FOSTER.

Department of State,

July 23, 1811.

SIR—I have submitted to the President your several letters of the 3d and 14th of this month relative to the British orders in Council and the blockade of May, 1806, and I have now the honor to communicate to you his sentiments on the view which you have presented of those measures of your government.

It was hoped that your communication would have led to an immediate accommodation of the differences subsisting between our countries, on the ground on which alone it is possible to meet you. It is regretted that you have confined your

self to a vindication of the measure which produced some of them.

The United States are less disposed than heretofore to enter into the question concerning the priority of aggression by the two belligerents, which could not be justified by either, by the priority of the other. But as you bring forward this plea in support of the orders in Council I must be permitted to remark that you have yourself furnished a conclusive answer to it, by admitting that the blockade of May 1806, which was prior to the first of the French decrees, would not be legal unless extended through the whole extent of the coast from the Cape to Brest, by an adequate naval force. That such a naval force was actually applied and maintained in the requisite strictness, and that the blockade was complied in and supported by the orders of November of the following year, or even until the French decrees of the same year, will not I presume be alleged.

But waving this question of priority, can it be seen without both surprise and regret, that it is still contended, that the orders in Council are justified by the principle of retaliation, and that this principle is strengthened by the inability of France to enforce her decrees. A retaliation is in its nature, and by its essential character, a returning like for like. Is the deadly blow of the orders in Council against one half of our commerce, a return of like for like to an empty threat in the French decrees, or must the other half of it may be a vindictive hostility, as far as its effect falls on the enemy. But when falling on a neutral who on no pretext can be held for more than the measure of injury received through such neutral it would not be a retaliation, but a positive wrong, by a plea which it is founded.

It is to be further remarked, that the orders in Council went even beyond the plea, such as this, as appeared to be, in extending its operations against the trade of the United States, with nations, like Russia, had not adopted the French decrees, and with all nations which had merely excluded the British flag, or an exclusion resulting in a matter of course with respect to whatever nation Great Britain might happen to be at war.

It is to be further remarked, that the modification originally contained in these orders, which permits neutrals to prosecute their trade with the enemy, through Great Britain, in the favorable light in which it is represented. It is impossible to predict the effect of this modification, without expressing our astonishment at the pretension which is made by the government of France, and her allies, to be, in a commercial sense, as well as in a political one, a common enemy to neutral countries. As an enemy Great Britain cannot trade with France.

Not only France permit neutrals to come into her ports for Great Britain, but the attempt of Great Britain to force trade through her ports, would have defeated the commercial object of prohibiting the United States altogether the market of her enemy for their productions, and of closing their ports to her in her market by a system of retaliation. Hence, if it is to be the nature of the system, it is to carry on the trade through the ports of neutrals; and this had the benefit of excluding by the former the advantages of peace, while suffering under the calamities of war. To reverse these, and extend to nations at peace the calamities of war, is a change as novel and extraordinary as it is at variance with justice and public law.

Against this unjust system, the United States entered at an early period, their solemn protest. They considered it their duty to come to the world their high disapprobation of it, and they have done so by such acts as were deemed most consistent with the rights and the policy of the nation. Remote from the contentious scene which agitates Europe, it has been their uniform object to avoid becoming a party to the war. With this view they have endeavored to cultivate friendship with both parties by a system of conduct which ought to have produced that effect. They have done justice to each party in every transaction in which they have been separately engaged with it. They have observed the impartiality which was due to both as belligerents standing on equal ground, leaving in no instance given a preference to either at the expense of the other. They have borne too with equal indulgence injuries from both, being willing while it was possible to impute them to accidents inseparable from a course of war, and not to a deliberate intention to violate their rights; and even when that intention could not be mistaken, they have let lost sight of the ultimate objects of their policy. In the measures to which they have been compelled to resort, they have in all respects maintained pacific relations with both parties. The alternate presented by their late acts, was offered equally to both, and could operate on neither, no longer than it should persevere in its aggressions on our neutral rights. The embargo and non-intercourse were peaceful measures. The regulations which they imposed on our trade were such as any nation might adopt in peace or war, without offence to any other nation. The non-importation is of the same character, and if it makes a distinction at this time between the belligerents, it necessarily results from a compliance of one with the offer made to both, and which is still open to the compliance of the other.

In the discussions which have taken place on the subject of the orders in Council and blockade of May, 1806, the British government, in conformity to the principle on which the orders in Council are said to be founded, declared that they should cease to operate as soon as France revoked

her edicts. It was said that in the event of her revocation it would proceed *pari passu*, with the revocation of France, in the revocation of the orders. I said, indeed, to show her unwillingness on Great Britain to revoke her edicts is complying according to her own engagements, and that the revocation ought not to be further delayed.

By the act of May 1st, 1810, it is provided that if either Great Britain or France cease to violate the neutral commerce of the United States, which fact the President should declare by proclamation, and the other party should not within three months thereafter revoke its measures, the edicts of the former, that then the United States should cease to violate the commercial intercourse between the United States and Great Britain and France, and their dependencies, should it remain and for the expiration of three months from the date of the proclamation, it revived and have full force against the former, its colonies and dependencies, and against all articles the growth, produce, or manufacture of the same.

The violations of neutral commerce alluded to in this act, were such as were committed on the high seas. It was in the treaty between the United States and the British government, that France had violated the neutral rights of the United States by her blockade edicts. It was with the trade of France for her allies that Great Britain had committed similar violations by similar edicts. It was the revocation of the se edicts, so far as they committed such violations, which the United States had in view, when they passed the law of May 1st, 1810. On the 5th of August, 1810, the French minister of foreign affairs addressed a note to the minister plenipotentiary of the United States at Paris, informing him that the decrees of Berlin and Milan were revoked, the revocation to take effect on the 1st of November following; that the measure had been taken by his government in confidence, that the British government would revoke its orders and renounce its new principles of blockade, or that the United States would cause their rights to be respected, conformably to the act of May 1st, 1810.

This measure of the French government was founded on the law of May 1st, 1810, as is expressly declared in the letter of the duke of Cadore announcing it. The edicts of Great Britain, the revocation of which were expected by France, were those alluded to in that act; and the means by which the United States should cause their rights to be respected, in case Great Britain should not revoke her edicts, were likewise to be found in the same act. They consisted merely in the enforcement of the non-importation act against Great Britain, in that unexpected and improbable contingency.

The letter of the 5th of August, which announced the revocation of the French decrees, was communicated to this government in consequence of which the President issued a proclamation on the 2d of November, the day after the receipt of the report of the French minister, in which the repeal of the French decrees was announced, and which he declared, that all the edicts were annulled by the act of May 1st, 1810, and all edicts which were promulgated in relation to France, and her dependencies, it was a necessary consequence of this proclamation, also, that if Great Britain did not revoke her edicts, the non-importation would operate on her, at the end of three months. This actually took place. She declined the revocation, and on the 2d of February last that law was effect. In confirmation of the proclamation, an act of Congress was passed on the 2d of March following.

Great Britain still declines to revoke her edicts on the pretension that France has not revoked hers. Under this impression she infers that the United States have done her injustice by carrying into effect the non-importation against her.

The United States maintain that France has revoked her edicts so far as they violate their neutral rights, and were contemplated by the law of May 1st, 1810, and have on that ground particularly claimed and do expect of Great Britain a similar revocation.

The revocation announced officially by the French minister of foreign affairs to the minister plenipotentiary of the United States at Paris, on the 5th of August, 1810, was in itself sufficient to justify the claim of the United States to a correspondent measure from Great Britain. She had declared that she would proceed *pari passu* in the repeal with France, and the day being fixed when the repeal of the French decrees should take effect, it was reasonable to conclude that Great Britain would fix the same day for the repeal of her edicts. Had this been done the proclamation of the President would have announced the revocation of the edicts of both powers at the same time and in consequence thereof the non-importation would have gone into operation against neither. Such too is the natural course of proceeding in transactions between independent states, and such the conduct which they generally observe towards each other. In all contracts between nations it is the duty of each to perform what it stipulates, and to presume on the good faith of the other, in a like performance. The United States having made a proposal to both belligerents, were bound to accept compliance from either, and it was no objection to the French compliance, that it was in a form to take effect at a future day, that being a form not unusual in laws and other public acts. Even when nations are at war and make peace, this obligation of mutual confidence, exists, and is respected. In treaties of commerce, by which their future intercourse is to be governed, the obligation is the same. If distrust and jealousy are