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Public Documents.

(Continued.) NO. 2.

The Secretary of State to Mr. John Forsythe, JONAS FORSYTHE, Esq. Minister Plenipotentiary of the U. States, Madrid.

Washington, 13th Aug. 1819. Sir: Captain Read, of the Hornet, has delivered to me your despatches of the 30th, 17th, and 22d of June, which have been submitted to the consideration of the President.

However extraordinary the conduct of the Spanish government in relation to the treaty, signed on the 22d of February last, has been, the President is unwilling to abandon the hope, that within the period of six months allowed for the exchange of the ratifications, a sense of justice and of decent regard for the public faith of the king and nation solemnly pledged by the treaty, will prevail over the individual intrigues and lurking influence which prompted the delay that has taken place.

The only reason assigned by the Minister of State, ad interim, Salomon, for the postponement of the Spanish ratification, was, the determination of the King, founded upon the great importance of the treaty, to act upon it with full deliberation. This may have been sufficient to justify delay within the period stipulated by the treaty; but after the expiration of that period, can no longer be alleged.

Should it be suggested that the United States themselves, have, on more than one occasion, withheld or annexed conditions to the ratifications of treaties signed by their Plenipotentiaries in Europe, it will readily recur to you, that, by the nature of our constitution, the full powers of our ministers never are or can be unlimited; that whatever they conclude must be, and by the other contracting party is always known and understood to be, subject to the deliberation and determination of the Senate, to whose consideration it must be submitted before its ratification; that our full powers never contain the solemn promise of the nation to ratify whatever the minister shall conclude, but reserve expressly, not only the usual right of ratification, but the constitutional privilege of the Senate to give or withhold their assent to the ratification: without which assent, by a majority of two thirds of the members present at the vote taken after consideration of the treaty, the President has no authority to ratify.

The Spanish government cannot allege either that Mr. Onis transcended his secret instructions, or that the ratification of the United States has been refused, or that any unfair advantage was taken on the part of the United States in the negotiation, or that Spain was not fully aware beforehand, of the full extent of the engagements contracted by Mr. Onis.

lowing passages from Vattel and Martens are decisive authorities upon the principle.

"Sovereigns treat together by the agency of their attorneys or mandatories, clothed with sufficient powers; they are commonly called Plenipotentiaries. All the rules of the law of nature, concerning things performed by commission, are here applicable. The rights of the agent are defined by the authority given him. From this he must not depart; but whatever he promises, within the terms of his commission, and according to the extent of his powers, is binding upon his constituent."

"At this time, to avoid all danger and difficulty, Princes reserve to themselves the right of ratifying that which has been concluded by their minister, in their name. The full power is merely a commission cum libere. If this commission were to have its full effect, it should be given with the utmost circumspection. But as Princes can be constrained to fulfil their obligations only by force of arms, the custom has arisen of relying upon their treaties only after they have sanctioned and ratified them. Whatever the Minister has concluded, remaining ineffectual until the sanction of the Prince, there is less danger of giving him a full power. But to refuse, with honor, to ratify that which has been concluded in virtue of a full power, the sovereign must have strong and solid reasons for it; and particularly he must show that his minister transcended his secret instructions."—Vattel, Book 2, chap. 12 § 155.

"Every thing that has been stipulated by an agent, in conformity to his full powers, ought to become obligatory for the state from the moment of signing, without even waiting for the ratification. However, not to expose a state to the errors of single person, it is now become a general maxim that public conventions do not become obligator till ratified. The motive of this custom clearly proves that the ratification can never be refused with justice, except when he who is charged with the negotiation, keeping within compass with respect to his public full powers, has gone beyond his secret instructions, and consequently has rendered himself liable to punishment, or when the other party refuses to ratify."—Martens' Summary, Book 2, chap. 1. § 3.

The obligation of the King of Spain, therefore, in honor and in justice, to ratify the treaty signed by his Minister, is as perfect and unqualified as his royal promise in the full power; and it gives to the United States the right equally perfect to compel the performance of that promise.

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* The sovereign who possesses full and absolute power, has undoubtedly the right to treat, in the name of the state which he represents, and his engagements bind the whole nation. But the rulers of nations have not all the exclusive power of making public treaties: some are under the restriction of taking the advice of the Senate, or of the representatives of the nation. It is in the fundamental laws of each state that we must look for the power capable of contracting valid engagements in the name of the state.—Vattel, Book 2, chap. 1. § 154.

their full sanction, were transmitted to Mr. Onis; that, both in relation to the grants of lands in Floridas, and to the western boundary, the terms which he obtained were far within the limits of his instructions; that it was known to, and understood by, him, that the grants to Alagon, Puno Rostro, and Vargas, were annulled by the treaty; that so fully was this his understanding, that, in his despatches to his government, he pointed out to them means of indemnifying those grantees, for their disappointments, from other lands. The government of the United States, indeed, considered the moderation and generosity of the terms to which they had acceded as a pledge that they would be received with pride and joy by the Spanish government. And so, it would not be denied, they were in the first instance received by the king of Spain and his cabinet. If, afterwards, from the unexpected extent of sacrifices which the United States made, for the purpose of conciliation, and of sincere amity, Spain has drawn the hope that this temper may be trifled with, and abused, it is proper, and will be just, that she should be effectually deceived.

Should ratifications be withheld, it is to be presumed that some other reason than the importance of the treaty, will ultimately be assigned by Spain for withholding it. What that will be, can at present only be conjectured. If the grants to the Duke of Alagon, and Com. Puno Rostro, should be assigned, as forming the objection, you will explicitly declare, that the United States have no compromise to make, and will listen to none on that subject.—The insinuation of the Marquis de Casa Yrujo, that those grants, by the letter of the eighth article, would be confirmed, if dated before the 24th of January, 1818, was totally unfounded. Mr. Onis knows that the whole of the eighth article was finally drawn up as it stands, with the express intention, declared by me, and agreed to by him, to exclude them from confirmation, whatever might be their dates.

Mr. Onis, on the first project of a treaty, delivered on the 9th of February, had drawn the article in such terms as to confirm all grants made before the 24th of January, 1818. If the article had been accepted by us in those terms, it could only, by an unworthy deception, be pretended that it covered the grants of Alagon, and Puno Rostro, because it had been explicitly agreed, on both sides, that they should be annulled.

Mr. Onis, who always spoke of them as annulled grants, of which he was ashamed, his country, has repeatedly declared to me, that he signed the treaty without knowing their dates, but fully believing them to be subsequent to the 24th of January. If, then, the confirmation of the grants prior to that date had been, as it was first proposed by Mr. Onis, positive and unqualified, and if the grants had been completely made before that date, there might be some pretence that they were covered by the letter of the article, though by a mistake common to both parties, of which a just and honorable government would disdain to take any other advantage than that of manifesting its good faith by its cheerfulness and promptitude in rectifying the error and fulfilling the intention, instead of the letter, of the engagement. But the article was not accepted in this form.

In the counter project delivered by me on the 13th of February, the grants prior to the 24th January, 1818, the conditions of which should have been performed by the grantees, and none other were declared to be confirmed. At the time that the counter project was received by Mr. Onis, he was confined to his house by indisposition. At his request, the communications between him and me were made by the friendly interposition of the French minister, M. Hyde de Neuville: Mr. Onis insisted on the article concerning the grants, as drawn up by him, not for the purpose of covering these grants, for he professed an earnest desire that they should be annulled, for the vindication of his own character from the aspersion which had been circulated here, that he had a personal interest in them; but he had drawn the article in these terms, merely to save the honor of the king. It was then observed, that the honor of the king could be saved by declaring the grants prior to the 24th January, 1818, binding to the same extent as they would have been upon the Spanish government, if the cession to the United States had not been made. It was known and admitted, that neither of those grants would in that case have been valid, because the conditions, by the laws of the Indies, indispensable to their validity, neither had been nor could be fulfilled by the grantees; and their non-performance; had been formally assigned by Mr. Onis, in his letter to me of 16th November, 1818, as his reason for agreeing to their being annulled. But he observed, that there were grants of old standing made bona fide to persons in actual possession of the lands, and having made improvements and settlements upon them, but who, by the late revol-

tions in Europe, and the convulsed state of Spain, had been prevented from completing all the conditions of their grants, that it would be but equitable to allow them time from the date of the treaty to fulfil them. To this a ready assent was given, and this article was thus agreed to, limiting to such grants alone, the confirmation prior to the 24th of January, 1818.

Minutes of the discussion upon this article were drawn up in writing at the time by Mr. de Neuville copies of which were furnished both to Mr. Onis and to me, prior to the signature, and recognized by us both to be correct. An abstract from them of all that relates to this article, together with the draft of the article, as first proposed by Mr. Onis, of that in our counter project, and of the article as finally agreed to, are herewith enclosed. They will show that the confirmation of the grants to Alagon, Puno Rostro, and Vargas, are as effectually excluded by the limitations in the first part of the article, if their date is prior to the 24th of January 1818, as by the date itself, if made subsequent to that time. They were not excluded, by name, for two reasons: First, conformably to the desire of Mr. Onis, to save the honor of the King. You will see this distinctly noted in the minutes of Mr. de Neuville. Secondly, because, from the despatches of Mr. Erving, it was supposed there were other grants of the same kind, and made under similar circumstances. To have named them might have left room for a presumptive inference in favor of others. The determination was to exclude them all.

No reliance was placed upon the exclusion by the date, because the grants having been secretly made, without the usual formalities, the copies of them received from Mr. Erving might be unauthentic; because no copy of the grant to Alagon had been received; and because, if fraud was to be guarded against, it was well known that antedating was one of its most familiar and favorite expedients. When, shortly after the signature of the treaty, a rumor was circulated here, that the date of the grants was one day prior to the 24th Jan. 1818, and that this last date had been assumed with the intention at least on the part of Mr. Onis, that they should be confirmed; without admitting the suspicion that he had attempted a deception for which the language of decency has no name, it was yet thought advisable, that no shadow of a pretence should by any possibility be raised after the ratification of the treaty, by Spain or the grantees, that those grants were confirmed, or that either party of the compact had acted as it stood.

You were therefore instructed; on exchanging the ratifications to deliver a declaration of this construction, which it had been the avowed intention of both parties, at the signature, that the eighth article should bear, in relation to the grants in question, and the only one which the United States would ever admit. Mr. Onis, by his answer to my note of the 10th March, unequivocally recognized that such had been his understanding of the import of the article when he signed it. He added, indeed, that if he had known that the grants were of a prior date, he should have insisted upon their being confirmed. But, without remarking that his ignorance of these dates could have no possible effect to render valid that which he had agreed and understood to be null and void, it had escaped his recollection that in his note to me of the 10th November, 1818, he had agreed that these grants should be all annulled, because their conditions had not been fulfilled by the grantees.

The President of the United States is yet willing to accept of the ratification of that treaty by Spain. It settles important interests; it secures pacific and harmonious relations with Spain; it provides indemnities to many of our citizens for injuries which Spain acknowledges they have suffered from her; and it gives us Florida, a land useless and expensive to Spain, though, chiefly by its position, valuable to us. But, for all these advantages we know that we have given in the same treaty ample and generous equivalents to Spain; and she will find herself much deceived, if in the hope of making hereafter a better bargain, she now disdains them. To possess Florida, with the full and fair consent of Spain, is undoubtedly an object of interest to the American government; but an object of infinitely deeper and dearer interest to them is, to observe towards Spain, and all other nations, a just, and candid, and single-hearted course of conduct, free from fraud, artifice, or disguise. And that which they observe they demand in return. They will neither themselves practise, nor from others submit to, a disingenuous, double dealing system of treachery, paltering with its own engagements, and spreading snares for the generous confidence of good faith.

You will therefore, on no consideration, exchange the ratifications without delivering the declaration prescribed by your instructions, when you took charge of the treaty; and you will not fail, if the ratification be withheld, to address an earnest remonstrance to the Spanish government against the grants themselves, and the circumstances under which they were issued.

The proposal of Mr. Onis's letter to this department, of 31st October, 1818,

* This is a wrong date, inserted by mistake and should be 16th November, 1818, as will be seen by referring to the extract of a letter from

was as follows: "That the late grant made by his majesty, in the month of January last, the of my first note announcing his majesty's willingness to accede them to the U. States, (the said grants having been made with a view to promote population, civilization, and industry, and not with that of alienating them, shall be declared and void, in consideration of the grant not having complied with the exact conditions of the cessions, as has been fact."

And in his letter of the 10th March referring to this proposal, he says, "the frankness and good faith which he uniformly actuated my conduct, which distinguish the character of Spanish nation, I have to declare to you, that, when I proposed the revocation of all the grants made subsequent to the date above mentioned, it was with full belief that it comprehended those made to the Duke of Alagon, as well as any others which had been stipulated that period."

Here, then, is the express declaration of the Spanish negotiator of that treaty. That the grants in question were all, in his full belief when he made a proposal, included among those stipulated to be annulled by the date, &c. That the grants had been made by the King, with a view of promoting population, civilization, and industry, and not with that of alienating the territory; and so. That the grants were all null and void, because the grantees had not complied with the essential conditions of the grants."

Now, what shall be said after the plain and positive declaration, which Spain advances, as the only ground-pretence, that these grants were confirmed by the treaty; that they were made before the 24th of January, 1818, indeed, but, after the instructions by which Mr. Onis was authorized to make his proposal of that date, for the cession of the Floridas, had been despatched to him from Madrid? What becomes of his positive assurance that these grants were made for the population and improvement of the territory, and not with a view to alienation? And what was the meaning of Spain in stipulating, that an acknowledged debt of indemnities from her to citizens of the United States, at least to the amount of five millions of dollars should be paid from the proceeds of public lands in Florida, when she now comes and says, that, even while her minister was signing this compact on her part, his sovereignty, by a secret and irregular alienation of the lands, had made its accomplishment impossible. As whatever other light it is to be considered, it is an injury to the United States, for which they are entitled to compensation.

When the government of a nation degrades itself, by deceit and perfidy, those who are constrained to enter certain political relations of neighborhood with them, are justified by the law of nations, and it is their duty to themselves, in subsequent transactions with such a state, to take pledges of security, for the performance of its engagements, more effectual than confidence in its good faith. Such pledges are simply within the reach of the United States in their interest hereafter with Spain, nor is it to be presumed that those who are intrusted with the maintenance of the rights and interests of that nation will overlook, or neglect, the duty which may be devolved upon them, of taking them.

This despatch will be delivered by Capt. Read, of the Hornet, to the ultimate decision of the Spanish government upon the treaty, should it depend on his arrival at Madrid, will be despatched immediately, giving you a delay of more than one week, before your communication, will be taken a final answer. At the expiration of that time, however, if the decision be made known to you, you will despatch Capt. Read, to his return to this place may, by confidence, be expected by the 20th November. Should the ratification be exchanged, your leave of absence contemplated when you left this city, may be used at your discretion; but, should the President think it beyond contingency of events upon the Congress.

I am, very respectfully, your and very humble servant. JOHN QUINCY JONES, Mr. Forsyth to the Marquis de Yrujo, His excellency the Marquis of Yrujo, First Secretary of State, &c. MADRID, MAY 10.

Sir: The treaty concluded 22d of February, 1819, at Wash. by Mr. Adams on the part of the United States, and the ratification of it by the Marquis de Onis on the part of his Majesty, has been entrusted to by the President of the United States, and the ratifications of this instrument any moment it may suit the convenience of your Excellency. From the nature of the engagement, it is desirable that the earliest exchange should be made; and it would be particularly convenient, as an opportunity is afforded of sending an important document to my government, by the American ship of war Hornet, now in the harbor of Cadiz, and destined in a few days, to the United States.

I enclose, with avidity, every opportunity to present to your Excellency, when Don Luis de Onis to the secretary of state of the date already published in the City of Wash. (See Fourth page.)