

RALEIGH, (N. C.)

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[CONCLUDED.]

Mr. Forsyth to Don Manuel G. Salmon.

[COPY.]

Sir, Manuel Gonzales Salmon, Acting First Minister of State, &c. &c. Madrid, August 21, 1819.

The undersigned, Minister Plenipotentiary of the United States near His Catholic Majesty, perceives with regret, but without surprise, from Sir Don Manuel Gonzales Salmon's note of the 19th inst. that the determination made by the Government of Spain not to ratify the Convention of the 22d February, signed at Washington, by Mr. Adams and the liberaler De Onis, will not be changed. The undersigned will not waste his own time nor encroach upon that of His Majesty's Government, by any observations on the said note; but will proceed to discharge the only duty which, on this subject, remains for him to perform. He has the honor formally to announce that, after the 22d day of the present month, as the ratifications of the Convention of the 22d February will not have been exchanged, all the claims and pretensions of the United States, which, with the spirit of moderation, the love of peace, and the delusive expectation that all causes of difference and dispute with Spain would be thereby adjusted and settled, they consented to modify or waive will stand in the same situation as if that Convention had never been made. That the United States will hold themselves free to press and enforce them in any every mode consistent with honor, that their interest may require. On the extraordinary steps taken by His Majesty's Government, in this affair, the undersigned will not remark, lest he should forget that he is not the representative of another, he is sent to reside. Of the rumors that prevailed on this subject, before the decision of His Majesty's Government was known, a decision he could not anticipate the Minister of the United States expressed himself in terms sufficient strong.

As the recent determination has proved that there was but too much truth in what he believed to be unfounded reports and gross calumnies, the undersigned must leave it to his Majesty's government, upon whom that obligation rests, to show upon what grounds that determination is reconcilable to honor and good faith. The undersigned laments that, while communicating to his own country this unexpected result, it is not in his power to unfold the train of reasoning by which His Majesty's government has been deluded into a belief that the course taken could be followed with various injury to the reputation of Spain. The United States, after waiting more than twenty years with a patience and forbearance unexampled, the operations of reason and justice upon the councils of Spain, will see with astonishment, this new instance of her apparent disregard to both. The Minister of the United States, when transmitting his correspondence with His Majesty's Government to his own country, will not omit to state the assurances verbally given to him, of His Catholic Majesty's earnest desire to cultivate the good will of the United States: Unfruitful profession, that cannot but produce all the effect they deserve, and all that could be rationally expected from them.

The undersigned renews to Sir Don Manuel Gonzales Salmon, the assurances of his perfect consideration and respect.

JOHN FORSYTH.

Mr. Forsyth to the Duke of San Fernando.

His Excellency the Duke of San Fernando and of Quiroga, first Minister of State, &c. &c. Madrid, October 2, 1818.

Sir: The government of the United States, having been prepared to expect the possibility of a failure on the part of Spain to ratify the Convention of the 22d of February last, by the extraordinary delay to decide upon this subject, and the termination of the King further to postpone that decision has communicated the note of Mr. S. to me, of the 19th of June, have instructed me, should the final decision on it by the King not be made prior to this time, to inform the Government of His Catholic Majesty, that although the six months stipulated in the treaty, within which the ratifications were to be exchanged, have expired; that the ratification of Spain, made with

the explicit understanding that the large grants of land in Florida to the Duke of Alagon, the Count of Puno Rostro, and Mr. Vargas, and all others made under similar circumstances, are, by the 8th article of that Convention, null, and void, and will be so held by the United States, will be accepted as valid; and I am authorized to receive the Spanish ratification for that of the United States; provided this exchange shall be immediate. This exchange must take place soon enough to enable me to send the ratified treaty to the United States by Captain Read, of the sloop of war Hornet, of the navy of the United States, who will remain in Madrid ten days, to carry to the president the final determination of Spain on this important subject. Having received from your Excellency's predecessors in office no explanation of the particular causes of the delay that has taken place, it is in my power only to explain the remains which induce the Government of the United States to insist upon an explicit understanding of the force and obligation of the 8th article of the treaty, prior to the exchange of ratifications; an understanding which will be fully shown by a declaration I am instructed to present at the time of the exchange, should it ever take place, a copy of which is enclosed. It was rumored in the United States, and since my residence in Madrid I have been informed that the large grants declare that their grants are valid under the 8th article. It has been asserted, with the strongest appearances of truth, that the determination of the Government of the United States to hold them void, as expressed in the letter of Mr. Adams, the secretary of state, to Mr. Onis, of the 10th of March, 1819, has been one of the chief causes of the extraordinary delay to decide upon the ratification of the instrument in Spain. It is necessary to the honor and the interest of the United States, whose conduct to Spain and to all nations, is governed by frankness and justice, free from fraud, artifice and disguise, which they will never practise, nor from others submit to a disingenuous, double dealing system of treachery, paltering with its own engagements, and spreading shares for the generous confidence of good faith, to place this subject beyond the reach of difficulty or doubt. Without knowing, therefore, the dates of the respective ratifications, and supposing it for a pretension of the grantees, under the 8th article, the Government directs me to present the declaration in question, not less essential to its own interest than to the honor of the King of Spain, since His Majesty would be subjected to the most unworthy imputation, if, under the circumstances, a claim should be made by his subjects, or those holding under them, sounded upon the alleged validity of these grants.

To suppose that your excellency is not in possession of all the facts in relation to this subject, would be a reflection on the zeal and fidelity of the representative of Spain in the United States, which I would be unwilling to cast upon any officer of his Majesty's government. I do not, therefore, send you copies of those documents, which show explicitly that, prior and subsequent to the signature of the treaty, it was expressly understood by the negotiators of that instrument that the 8th article, written by the Spanish Minister himself, excluded these grants. In fact, when the express stipulation that the claims of the citizens of the United States upon Spain were to be paid out the proceeds of the sales of them; to suppose that the Spanish government had disposed of the whole or the greater part of them, in gifts to its subject, and will insist upon the validity of those gifts, is to suppose it capable of an act of notorious and deliberate perfidy. The government of my country considered that the treaty became, from the moment of its signature by the Chevalier de Onis, and the ratification of the United States, as binding upon the honor and good faith of the Spanish king and nation, as it would be after the ratification. Although I do not understand that this position is, or will be contested by Spain, it may not be useless to show its strength fully to the view of your excellency. The words of his C. M. in the original of which was delivered to the American government before the signature of the treaty, are, after authorizing Mr. Onis to treat, negotiate, and conclude, a treaty, whereby past grievances may be adjusted, and a firm and lasting peace established between the two governments, "Obligadonos y prometemos fe y palabra de Rey que prometemos ratificaremos, cumpliremos, y pararemos observarsy cumplir iniolviablenente quanto por vos fuere estipulado y firmo do, para lo qual os concedo todas las facultades y plenos poderes en lo forma mas amplia que de derecho se requieren." If the usage of nations, which requires the ratification of the sovereign for the full confirmation of a treaty, could create any doubt of the import of language

so unqualified or explicit, there is nothing dubious or uncertain in the extent of the obligation resting upon him, by the signature of his ministers, vested with such full powers. Upon this principle, the following quotations, from Vattel and Martens, are decisive authorities: "Sovereigns treat together by the agency of their attorneys or their 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 to 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 constituents." "At this time, to avoid all danger and difficulty, princes reserve to themselves the right of ratifying that which has been concluded by their ministers 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 obligation 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 ratification of the Prince, there is less danger in giving him a full power, the sovereign must have strong and solid reasons for it, and particularly he must show that his minister transcended his instructions." Vattel, book 2, chap. 12, § 156.

"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 ever waiting for the ratification. However, not to expose a state to the errors of a single person, it is now become a general maxim, that public conventions do not become obligatory until 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 the extent of his public full powers, has gone beyond his secret instructions, and consequently rendered himself liable to punishment, or when the other party refuses to ratify." Martens' Summary, book 2, chapter 3.

But why should quotations be made, to prove a principle so familiar to every man in public or private life, that he is bound according to his directions, as he binds himself in honor and conscience, as if he had pledged himself in person? 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. It is well known to my government that the Spanish government cannot allege that its minister transcended his secret instructions, or that the ratification of the U. States has been refused, or that any unfair advantage was taken by the United States, in the negotiation, or that Spain was not well aware, before hand, of the full extent of the engagements contracted by Mr. Onis. It is too well known to be denied, that the last instructions of Mr. Onis authorized him to concede much more than he did. The government of the United States, indeed, considered the generosity and moderation of the terms to which they had assented, as a pledge that they would be received, as in the first instance they were received, by his Catholic Majesty, and his royal council, with pride and joy, if, from the unexpected extent of the sacrifices the United States made for the purpose of conciliation, the conclusion has been drawn, that their conciliatory temper may be tried with and abused. It is just and proper that Spain should be effectually undeceived. I am, therefore, instructed further to inform your excellency that, if the ratified copy of the treaty should not arrive in the United States before the first day on which the Congress of the United States meets, the President will lay before that body all the transactions relating to the treaty, and such measures will be adopted by the competent authority, as the exigency of the case may require.

Whatever may be determined upon, Spain will be responsible to the United States for all damages and expenses which may arise from the delay to ratify, and from the measures to which the United States may resort, to give efficacy to their rights, and that for the indemnities to which they will be justly entitled, by this violation of faith by Spain, the U. States will look to the territory west of their present western boundary, on the Gulf of Mexico.

To this proposal, made in the spirit of moderation, of generous forbearance, and with the earnest desire of sincere amity with Spain, I am instructed to require an immediate explicit, and unequivocal reply. Should this reply not be made before the tenth of the current month, I give formal notice to your Excellency that the proposal will be considered as rejected, and the proper communication will be made to the President of the U. S. I renew to your Excellency, whom may God preserve, the assurances of my distinguished consideration.

JOHN FORSYTH.

[TRANSLATION.] The Duke of San Fernando and Quiroga to Mr. Forsyth.

To the Minister Plenipotentiary of the United States of America.

Sir: Having had the honor to lay before the King, my master, the contents of the note which you addressed to me on the 2d instant, his Majesty, whose justice and impartiality are so universally known, having examined the principal points embraced therein, has commanded me to answer you as follows:

The official communications addressed to you by Don Manuel Gonzales Salmon might exempt me, it would seem, from all further discussion of the subject in question; inasmuch as his Majesty, actuated as well by the claims of his honor and duty as by a uniform spirit of justice and conciliation towards the United States, and pursuing the example of his august predecessors, who, at an early period, and to promote the very establishment of the American government, gave such abundant proofs of similar dispositions, had determined, upon mature reflection and deliberation, to send a minister to that government, who, after requiring and giving the necessary explanations, might terminate this affair; and, as neither the actual state of the question, nor what you have been pleased to communicate to me, presents any motive for changing a resolution so deliberate and so just, and which the honor of his Majesty also forbids, there appears to be a still more urgent motive to confirm it.

With this answer I might leave you completely satisfied; but I especially take leave, with the permission of the King, my Lord, to reply to some of the points treated of in your note, with the brevity and precision which characterize me; and because you state that you have not yet received an explanation of the delay in ratifying the Treaty, and attribute it to the difficulties arising out of its eighth article. You will permit me to remark to you, that this delay does not manifest that want of good faith, or the artifice which is indirectly insinuated; it is rather the declaration now demanded by you, and previously announced by your government, after having signed and ratified the Treaty; a declaration which, by annulling one of its most clear, express, and conclusive articles, seemed much more likely to give room for a similar charge, in opposition to yours.

If your government, as you are pleased to state to me, really believed that the treaty, from the moment it was signed, became equally obligatory on Spain as it was on the United States, under whose inspection it was formed, a genuine, or weigh the authority of others, pointed by you in support of your opinion, the deductions from them, and the weight of many others I now forbear to adduce, as it might seem to offend your illustration, militate against you. But even fancying them for a moment, without ever admitting them, the very authorities which you deem conclusive, in relation to a treaty, signed, but not ratified, are opposed to you, or require, still more forcibly, that an agreement, concluded, signed and solemnly ratified, as the present one has been by your government, should be subjected to a due investigation. And it, notwithstanding this, declarations are required, at the moment of its solemn conclusion, and before its ratification by the other party, which totally annul one of its most clear, precise, and conclusive articles, without the sanction of a secret agreement authorizing the same, how should it appear strange that his Majesty, while yet unfettered by its stipulations, might and should demand explanations, rendered necessary by so unlooked for a proceeding? In the transaction of settlements, or agreements, between nation and nation, the solemn act which consummates them, namely, the ratification, would become wholly illusory, if the principles which it is now, in vain, attempted to establish, were to be admitted. I again repeat, that the very authorities cited by you literally declare, as I have already remarked, that the sovereign, for strong and solid reasons, or if his minister has exceeded his instructions, may refuse his ratification. [Vattel, l. b. 2, Chap. 12] and that public treaties are not obligatory until ratified. [Martens, l. b. 2, Chap. 3. See note.]

No less erroneous, and even unprecedented, is the judgment, or consequence, you draw from the instructions which you suppose to have been given to his Majesty's Minister for the conclusion of this treaty. Truly, it would be the first time that a diplomatic communication, professing to be thoroughly and minutely acquainted with these instructions, should cite them as being perfectly well known. The respect due to the King's negotiators will not, for a moment, allow me to believe that they have failed in their obligations, by violating secrecy; nor will the high consideration I entertain for your government permit me to think it capable of having employed the oblique and vicious means that such information must imply; it is, therefore, wholly impossible for me to admit your assertion on this point.

But, dismissing so unpleasant a discussion, and desiring to express to you anew the spirit of conciliation and friendship which prompts the King my master to put an end to these differences, as I Toledo was said to have been charged to put an end to these differences, as I declared to you in the beginning of this month, I am enabled to assure you, that it is a subject of great regret to his Majesty, that such weighty considerations

should have hitherto obliged him to refer the ratification of the treaty concluded by his minister to the federal government. These considerations, stated by Don Manuel Gonzales Salmon communicating to you his Majesty's determination, acquire additional weight when we find that intelligence has received, through the medium of newspapers, and other means, that an expedition directed to the province of Texas has been ordered or protected, and other acts committed within the limited, but unexpired, assigned for the ratification, which you will be duly informed, have been called for the remonstrances of his Majesty's Charge d'Affaires to your government. Notwithstanding his Majesty uniformly evinced a desire to maintain perfect union and amity with the American government, yet, to render those able and permanent between two nations, who, under favor of a state of amity, endeavoring to settle their differences, is necessary they should be based on reciprocal utility and confidence. Indulgence of these noble and generous sentiments, his Majesty confidently looks to the attainment of this desirable result. This was the object of the treaty; an object unfortunately not attained, withstanding the enormous sacrifices which the King my master endeavored to make. In these feelings and dispositions, his Majesty still perseveres, adopting a measure judged independent of that of sending to the government of the United States, as will promptly be done, a person possessing his entire confidence and who, by smoothing the obstacles, removing the difficulties, which have hitherto opposed the accomplishment of beneficent intentions, may fully convince the federal government of the frankness and loyalty, as well as of the honor and dignity which it is his Majesty's desire to maintain in his relations of amity and union with that government.

When you renew to you my sincere respects, and I pray God to preserve you many years.—Palma, October 8, 1819. The Duke of San Fernando & Quiroga, NO. 3.

Extracts of a letter from Mr. Rush to the Secretary of State, dated London 15th September, 1819.

"Since my second despatch, written on the fourth of this month, I have had an opportunity of seeing Lord Castlereagh. I gladly took advantage of it to introduce, as an immediate topic, the important subject to which that despatch related.

"I remarked, that it appeared, after all, that our treaty at Madrid was not what has passed between us, would be pointed to a different issue; and I can only add my wish that it had been different. He then said, that, from Sir Henry Wellesley's communications, he was led to infer that the refusal to ratify had been absolute; but that the government of Spain merely desired further explanation; I replied, that Mr. Forsyth had, I was sure, tendered every necessary explanation; but it had not been listened to."

"What the pretence of Spain may be for this fresh act of injustice or procrastination, I am not in the slightest degree informed. A copy of the provisions of the treaty itself, I have yet never seen. But it occurs to me, at this juncture, to say, what may seem superfluous, but what the importance of the subject now assumes, at all points prompts me to bring into view, name that I learned, through undoubted sources, that Mr. Onis, when here, affirming in the most unequivocal manner, that, signing the treaty, he stood strictly fully justified by his instructions." Extract of a letter from Mr. Rush to Mr. Adams, giving the substance of a conversation with Lord Castlereagh. London, Sept. 17th, 1819.

"His Lordship (Castlereagh) took occasion to divert to the subject of Florida. It was for the first time, out some previous invitation on my part, and I witnessed, with a proportionate satisfaction, his spontaneous approach. He did so, as I soon saw, in order to enforce, by corroborations, his former communications to me. He took for his table a packet of Sir Henry Wellesley's despatches from Madrid. He read two of these he read passages going to show that that ambassador had made known to the Spanish cabinet the will of the British court that the ratification of the treaty should take place. One of the despatches was dated on the 6th of June, the other on the 6th of July. The first imported a belief, founded on state of things then existing, that the treaty would be ratified. His Lordship also read to me a passage from one of his own despatches to Sir Henry, in which an unequivocal opinion was expressed that the true interests of Spain would best be promoted by a ratification. I thought that this despatch was dated on the 5th of July.

He asked me if I had heard, during the summer of an intended visit of a 'Toledo' to London. I replied that I had said that he had too but that he never arrived. The Spanish government knew too well the opinions of this man, to imagine that the propositions with which Toledo was said to have been charged could ever be countenanced. These continued, were, to ask a loan of money, to pay the claims recognized by the treaty, and also to enquire if Great Britain