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Mr. Madison's letter to Mr. Erskine. Concluded.

Bring the case before us to this plain and equitable test. The French decree of Nov. 1806, undertook to declare the British Isles in a state of blockade, to be enforced if you please against the neutral commerce of the United States on the high seas, according to the faculty possessed for the purpose. As far as it was actually enforced, or an effect resulted from an apprehension that it could and would be enforced, it was an injury to Great Britain, for which let it be supposed the United States were answerable. On the other hand, as far as it was not enforced, and evidently either would not or could not be enforced, no injury was experienced by Great Britain, and no remedy could lie against the United States.—Now, sir, it was pretended that at the date of the first order issued in January, 1807, any injury had accrued to, or was apprehended by Great Britain from an execution of the French decree against the commerce of the United States, on the theatre of their neutral rights. So far from it, that the order stands self-condemned as a measure of retaliation, by expressly stating that the fleets of France and her allies, instead of being able to enforce the blockade of the British Isles, were themselves confined to their own ports by the entire superiority of the British navy: converting thus, by the strangeness of reasonings, the security of Great Britain against injury from the French decree, into a title to commit injury on a neutral party. In the November orders also, whilst it is admitted that the French decree could not be but imperfectly executed for want of means, it is asserted that the intention of the French decree, and not the injury accruing from its operation through the commerce of the United States, is the scale by which the retaliating injury against them is to be measured.

Such are the pretences and such the principles on which one great branch of the lawful commerce of this country became a victim to the first British orders, and on which the last orders are now sweeping from the ocean all its most valuable remains.

Against such an unprecedented system of warfare on neutral rights and independence, the common judgment and common feelings of mankind must forever protest.

I touch, sir, with reluctance the question on which of the belligerent sides the invasion of neutral rights had its origin. As the United States do not acquiesce in these invasions by either, there could be no plea for involving them in the controversy. But as the British orders have made the decree of France, declaring, contrary to the law of nations, the British Islands in a state of blockade, the immediate foundation of their destructive warfare on our commerce, it belongs to the subject to remind your government of the illegal interruptions and spoiliations suffered, previous to that decree by the neutral commerce of the United States under the proceedings of British cruisers and courts, and for the most part in consequence of express orders of the government itself. Omitting proofs of inferior note, I refer to the extensive aggressions on the trade of the United States, founded on the plea of blockades, never legally established according to recognized definitions; to the still more extensive violations of our commerce with ports of her enemies, not pretended to be in a state of blockade; and to the British order of council issued near the commencement of the existing war. This order, besides its general interposition against the established law of nations, is distinguished by a special ingredient, violating that law as recognized by the course of decisions in the British courts. It subjects to capture and condemnation all neutral vessels, returning with lawful cargoes, on the sole consideration, that they had in their outward voyage, deposited contraband of war at a hostile port. If the commerce of the United States could therefore in any case be reasonably made the victim and the sport of mutual charges and reproaches between belligerent parties, with respect to the priority of their aggressions on neutral commerce, Great Britain must look beyond the epoch she has chosen for illegal acts, her adversary, in support of the allegation, in which she founds her retaliating edicts against our commerce.

But the United States are given to understand that the British government has, as a proof of its indulgent and amicable disposition towards them, mitigated the authorised rigor it might have given to its measures, by certain exceptions peculiarly favorable to the commercial interests of the U. States.

I forbear, sir, to express all the emotions with which such a language, on such an occasion, is calculated to inspire a nation which cannot for a moment be unconscious of its rights, nor mistake for an alleviation of wrongs regulations to admit the validity of which would be to assume badges of humiliations never worn by an independent power.

The first of these indulgencies is a commercial intercourse with the dependencies of the enemies of Great Britain, and it is con-

sidered as enhanced by its being a deviation in favor of the United States from the ancient and established principle of maritime law prohibiting altogether such an intercourse in time of war.

Surely, sir, your government in assuming this principle in such terms in relation to the U. States, must have forgotten their repeated and formal protests against it, as these are to be found in the discussions and communications of their ministers at London, as well as in explanations occasionally made on that subject to the British representative here. But permit me to ask, more particularly, how it could have happened that the principle is characterised as an ancient and established one. I put the question the more freely, because it has never been denied that the principle, as asserted by your government, was for the first time introduced during the war of 1756. It is in fact invariably cited and described in all judicial and other official transactions "as the rule of 1756." It can have no pretension therefore to the title of an ancient rule.

But instead of being an established rule or principle, it is well known that Great Britain is the only nation that has acted upon, or otherwise given a sanction to it. Nay, it is not even an established principle in the practice of Great Britain herself. When first applied in the war of 1756, the legality of a neutral trade with the enemy's colonies was not contested by it. In certain cases only of the colonial trade, the allegation was, that the presumptive evidence arising from circumstances against the bona fide neutrality of the ownership, justified the condemnation as of enemy's property. If the rule of condemnation was afterwards during the war, converted into the principle now asserted, it could not possibly have been in operation in its new shape more than a very few years. During the succeeding war of 1778, it is admitted by every British authority that the principle was never brought into operation. It may be regarded, in fact, as having been silently abandoned; and within the period of war since its commencement in 1793, the manner in which the principle has been alternately contracted and extended, explained, sometimes in one way, sometimes in another, rested now on this foundation, now on that, is no secret to those who have attended to its history and progress in the British orders of council and the British courts of admiralty.

With the exception, therefore, of a period, the last in modern times from which authentic precedents of maritime law will be drawn, & throughout which the United States, more interested in the question than any other nation, have uniformly combated the innovation, the principle has not in the British tribunals been in operation for a longer term than three, four or five years, whilst in no others has it ever made its appearance but to receive a decision protesting against it.

Such is the antiquity and such the authority of a principle, the deviations from which are held out as so many favors consoling the United States for the wide spread destruction of their legitimate commerce.

What must be said as to the other exceptions which seem to have been viewed as claims on the gratitude of the United States? It is an indulgence to them in carrying on their trade with the whole continent of Europe, to be laid under the necessity of going first to a British port, to accept a British license and to pay a tribute to the British Exchequer, as if we had been reduced to the colonial situation which once imposed these monolizing restraints?

What again must be said as to other features which we see blended on the face of these regulations? If the policy of them be to subject an enemy to privations, why are channels opened for a British trade with them, which are shut to a neutral trade? If in other cases, the real object be to admit a neutral trade with the enemy, why is it required that neutral vessels shall perform the ceremony of passing through a British port, when it can have no imaginable effect but the known and inevitable one of prohibiting the admission of the trade into the port of destination?

I will not ask why a primary article of our productions and exports, cotton wool, is to be distinguished, in its transit, by heavy impost not imposed on other articles, because it is frankly avowed, in your explanation of the orders, to be intended as an encouragement to British manufactures, and a check to the rival ones of France? I suppress also, though without the same reason for it, the enquiry, why less rigorous restrictions are applied to the trade of the Barbary powers than are enforced against that of a nation, such as the United States, and in relations such as have existed between them and Great Britain?

I cannot however pass without notice, the very unwarrantable innovation contained in the two last of the orders. In one of them, a certificate of the local origin of a cargo, altho' permitted in the port of departure and required in the port of destination, by regula-

tions purely domestic in both, and strictly analogous in principle to the regulations in the commercial code of Great-Britain is made a cause of capture on the high seas, and of condemnation in her maritime courts. In the other order, the sale of a merchant ship by a belligerent owner to a neutral, altho' a transaction as legal when fair, as a dealing in any other article, is condemned by a general rule, without an atom of proof or of presumption, that the transfer in the particular case is fraudulent and the property therefore left in an enemy.

In fine, sir, the President sees in the edicts communicated by you, facts assumed which did not exist, principles asserted which never can be admitted; and, under the name of retaliation, measures transcending the limits reconcilable with the facts and the principles, as if both were as correct as they are unfounded. He sees moreover in the modifications of this system, regulations violating equally our neutral rights & our national sovereignty. He persuades himself therefore that your government will see in the justice of the observations now made in addition to those I had the honor verbally to state to you in the first instance, that the United States are well warranted in looking for a speedy revocation of a system which is every day augmenting the mass of injury for which the United States, have the best of claims to redress. I have the honor, &c.

JAMES MADISON.

Hon. David M. Erskine, &c.

MR. MADISON'S LETTERS TO GEN. ARMSTRONG.

Mr. Madison, Secretary of State, to General Armstrong, Minister Plenipotentiary of the United States, at Paris.

(Extract.)

DEPARTMENT OF STATE.
May 22, 1807.

The two last letters received from you were of December 24, and January 16.

The decree of November 21, communicated in the first, had previously reached us, and had excited apprehensions which were repressed only by the inarticulate import of its articles, and the presumption that it would be executed in a sense not inconsistent with the respect due the treaty between France and the United States. The explanations given you by the minister of marine, were seen by the President with much pleasure, and it only remains to learn that they have been confirmed by the express authority of the emperor. We are the more anxious for this information, as it will fortify the remonstrances which have been presented at London, against the British order of January 7th. Should it, contrary to expectation, turn out that the French decree was meant, and is to operate, according to the latitude of its terms, your will of course have made the proper representations, grounded as well on the principles of public law, as on the expressed stipulations of the convention of 1800—Nothing besides, could be more preposterous, than to blend with an appeal to neutral rights and neutral nations, a gross infraction on the former and outrage on the sentiments of the latter; unless it be to invite a species of contest on the high seas, in which the adversary has every possible advantage. But on the more probable supposition, that the decree will not be unfavorably expounded, it will be still necessary to press on the French government a dispatch of such orders to their cruisers in every quarter, as will prevent a construction of the decree favorable to their cupidity. The moment your letter was received, the answer of the French minister of marine to your note was communicated to General Turreau, with a call on him to transmit it immediately to the French governors in the West Indies. This he readily engaged to do. But notwithstanding this precaution, there are proofs that West Indian privateers have, under color of the edict, committed depredations which will constitute just claims of redress from their government.

Mr. Erving has forwarded a Spanish decree also, avowedly pursuing the example and the views of the French emperor—the terms of this decree are even more vague, or rather more broad, than those of the prototype; and, if not speedily recalled or corrected, will doubtless extend the scene of spoiliations already begun in that quarter; and of course, thicken the cloud that hangs over the amity of the two nations."

Extract of a letter from Mr. Madison to Gen. Armstrong.

DEPARTMENT OF STATE,
February 8th 1808.

Your letters and communications by Dr Bullus were duly delivered on the 14th day of December. The same conveyance brought a copy of the sentence pronounced by the French prize court in the case of the *Horizon*, giving a judicial effect to the decree of Nov. 21st 1806, as expounded in the answer of Mr. C. Campagna to your letter of the 12th Nov. 1807.

Whilst the French government did not a-

vow or enforce a meaning of the decree of Nov. 1806, in relation to the United States, extending its purview beyond the municipal limits, it could not in strictness be regarded as an infraction either of our neutral or conventional rights; and consequently did not authorise more than a demand, of seasonable explanations of its doubtful import, or friendly expostulations with respect to the rigor and suddenness of its innovations.

The case is now essentially changed. A construction of the decree is avowed and executed, which violates as well the positive stipulations of the convention of Sept. 30th 1800, as the incontestible principles of public law: and the President charges you to super-add to whatever representations you may have previously made, a formal remonstrance in such terms as may be best calculated either to obtain a recal of the illegal measure, so far as it relates to the United States or to have the effect of leaving in full force all the rights accruing to them from a failure to do so.

That the execution of local laws against foreign nations on the high seas, is a violation of the rights of the former and the freedom of the latter, will probably not be questioned. A contrary principle would in fact imply the same exclusive dominion over the entire ocean, as is enjoyed within the limits of the local sovereignty, and a degradation of every other nation from its common rights and equal rank.

If it be contended that the decree as a retaliation on the other belligerent, at the expense of neutral nations, is justified by a culpable acquiescence in the prior measures of that belligerent, operating through neutrals, you will be able to deny such acquiescence, and to urge moreover that, on every supposition, the retaliating measures could not be justly enforced, in relation to neutrals, without allowing them at least a reasonable time for choosing between due measures against the prior wrong, and an acquiescence in both. The copy of the representations to the British government, through its ministers here, on the subject of its orders in January, 1807, will at once disprove an acquiescence on the part of the United States, and explain the grounds on which the late extension of the French decree of November 1806, is an object of just remonstrance.

The conduct of the French government, in giving this extended operation to its decree, and indeed in issuing one with such an apparent or doubtful import against the rights of the sea, is the more extraordinary, inasmuch as the inability to enforce it on that element exhibited the measure in the light of an empty menace, at the same time that it afforded pretexts to her enemy for severe retaliations, for which ample means are found in her naval superiority.

The accumulated dangers, to which the illegal proceedings of the belligerent nations have subjected the commerce and navigation of the United States, have at length induced Congress to resort to an embargo on our own vessels, as a measure best fitted for the crisis, being an effectual security for our mercantile property and mariners, now at home and daily arriving, and, at the same time, neither a measure nor just cause of war. Copies of this act were soon after its passage, transmitted to Mr. Pinkney, with an authority to assure the British government, that it was to be viewed in this light, and that it was not meant to be the slightest impediment to amicable negotiations with foreign governments. He was requested to avail himself of an opportunity of communicating to you and Mr. Erving this view of the subject, and I hope that you will have been thence enabled to present it to the French government. Not relying however, on that indirect opportunity, I send by this another copy of the act, with an instruction from the President, that you make it the subject of such explanations as will guard against any misconception of the policy which led to it. It is strictly a measure of precaution, required by the dangers incident to external commerce, and, being indiscriminate in its terms and operation towards all nations, can give no just offence to any. The duration of the act is not fixed by itself; and will consequently depend on a continuation or cessation of its causes, in a degree sufficient in the judgment of the legislature, to induce or forbid its repeal. It may be hoped that the inconveniences felt from it by the belligerent nations may lead to a change of the conduct which imposed the inconveniences of it on ourselves. France herself will be a sufferer, and some of her allies far more so. It will be very agreeable to find in that consideration, and still more in her sense of justice, a sufficient motive to an early manifestation of the respect due to our commercial rights. The example would be worthy of the professions which she makes to the world on this subject."

February 18. Since the above was written, I have been under a degree of indisposition which has suspended the proposed continuation of it, and which now will oblige me