



"Ours are the plans of fair, delightful Peace,
"Unwarp'd by party rage, to live like Brothers."

State Papers.

DOCUMENTS

Accompanying the President's Message.

[Continued.]

CORRESPONDENCE

Between Mr. Monroe and Mr. Foster, on the subject of the ORDERS IN COUNCIL

MR. FOSTER TO MR. MONROE.

Washington July 16, 1811.

SIR—I had the honor to receive the letter which you addressed to me under yesterday's date, requesting an explanation from me, in consequence of my letters of the 3d and 14th inst. of the precise extent in which a repeal of the French decrees is 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 merchandise entering French ports in contravention of the 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 compromise regulations essentially different in their principles, some of them violating the neutral rights of the U. States, others operating against G. 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 in to view the French decrees themselves, together with the official declarations of the French Minister which accompanied them.

In the body of those decrees, and in the declarations alluded to, you will find, sir, express avowals that the principles on which they were founded, and the principles contained in them, are wholly new, unprecedented, and in direct opposition to all ideas of justice and the principles and usages of all civilized nations.

The French government did not pretend to say that any one of the regulations contained in these decrees was a regulation which France had ever been in the previous practice of.

They were consequently to be considered, & 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, authorised by the laws of nations and practised in former wars, will never be complained of by Great Britain; but the regulations of the Berlin and Milan decrees do and are declared to violate the laws of nations and the rights of neutrals, for the purpose of attacking thro' 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 deputation from the free imperial Hanse 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 to the situation in which it stood previously to their promulgation, can his Royal Highness 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, & 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 should ever subsist between America and Great Britain, as the delusions attempted by the government of France have now been made manifest, and the perfidious plans of its ruler exposed; by which 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 dispatch 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.

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 16th 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 yourself to a vindication of the measures which produced some of them.

The United States are as little disposed now as 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 those of the other. But as you bring forward that 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 supported through the whole extent of the coast, from the Elbe to Brest, by an adequate naval force. That such a naval force was actually applied and continued in the requisite strictness until that blockade was surmised in and superseded by the orders of November of the following year, or even until the French decree of the same year, will not I presume be alledged.

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 name, and 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, against the other half? It may be a vindictive hostility, as far as its effects fall on the enemy. But when falling on a neutral who on no pretext can be liable for more than the measure of injury received through such neutral, it would not be a retaliation, but a positive wrong, by the plea on which it is founded.

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

I am far from viewing the modification originally contained in these orders, which permits neutrals to prosecute their trade with the continent, through Great Britain, in the favorable light in which you represent it. It is impossible to proceed to notice the effect of this modification without expressing our astonishment at the extravagance of the political pretension set up by it; a pretension which is utterly incompatible with the sovereignty and independence of other states. In a commercial view it is not less objectionable, as it cannot fail to prove destructive to neutral commerce. As an enemy, G. Britain cannot trade with France. Nor does France permit a neutral to come into her ports from G. Britain. The attempt of G. Britain to force our trade through her ports, would have therefore the commercial effect of depriving the U. States altogether of the market of her enemy for their productions, and of destroying their value in her market by a surcharge of it. Heretofore it has been the usage of belligerent nations to carry on their trade through the intervention of neutrals; and this had the beneficial effect of extending to the former the advantages of peace, while suffering under the calamities of war. To reverse the rule, and to extend to nations at peace the ca-

lamities of war, is a change as novel & 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 evince 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 policy of the nation. Remote from the contentious scene which desolates 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, having 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 casualties inseparable from a cause of war, and not to a deliberate intention to violate their rights, and even when that intention could not be mistaken, they have not lost sight of the ultimate object 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 alternative 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 & 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, in its operation 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 stated also, that the British government would proceed *pari passu*, with the government of France, in the revocation of her edicts. I will proceed to shew that the obligation on Great-Britain to revoke her Orders is complete, according to her own engagements, and that the revocation ought not to be longer delayed.

By the act of May 1st, 1810, it is provided, "That if either Great Britain or France should cease to violate the neutral commerce of the U. States, which fact the President should declare by proclamation, & the other party should not within three months thereafter revoke or modify its edicts in like manner; that then certain sections in a former act interdicting the commercial intercourse between the U. States and G. Britain and France and their dependencies, should from and after the expiration of three months from the date of the proclamation, be 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 trade between the U. States and the British dominions, that France had violated the neutral rights of the U. States by her blockading edicts. It was with the trade of France and her allies that G. Britain had committed similar violations by similar edicts. It was the revocation of those edicts, so far as they committed such violations, which the U. 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 U. States at Paris, informing him that the decrees of Berlin and Milan were revoked, the revocation to take effect on the 1st 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 U. 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 G. Britain, the revocation of which were expected by France, were those alluded to in that act; and the means by which the U. States should cause their rights to be respected, in case G. 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 G. Britain, in that unexpected and improbable contingency.

The letter of the 5th 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 Nov. the day after that on which the repeal of the French decrees was to take effect, in which he declared, that all the restrictions imposed by the act of May 1st, 1810, should cease and be discontinued in relation to France and her dependencies. It was a necessary consequence of this proclamation, also, that if G. Britain did not revoke her edicts, the non-importation act would operate on her at the end of three months. This actually took place. She declined the revocation, and on the 2d Feb'y last that law took effect. In confirmation of the proclamation, an act of Congress was passed on the 2d of March following.

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

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

The revocation announced officially by the French Minister of Foreign Affairs to the Minister Plenipotentiary of the U. States at Paris, on the 5th of August, 1810, was in itself sufficient to justify the claim of the U. States to a correspondent measure from G. 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 G. Britain would fix the same day for the repeal of her orders. 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 compacts between nations it is the duty of each to perform what it stipulates, and to presume on the good faith of the other for a like performance. The U. States having made a proposal to both belligerents were bound to accept a 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 neutral 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 allowed to prevail, the moral tie that binds nations together, in all their relations, in war as well as in peace, is broken.

What would G. Britain have hazarded by a prompt compliance in the manner suggested? She had declared that she had adopted the restraints imposed by her orders in council with reluctance, because of their distressing effect on neutral powers. Here then was a favorable opportunity presented to her to withdraw from that measure with honor, by the conduct of France afterwards what it might. Had G. Britain revoked her orders, and France failed to fulfil her engagement, she would have gained credit at the expense of France, and could have sustained no injury by it, because the failure of France to maintain her faith would have replaced G. B. at the point from which she had departed. To say that a disappointed reliance on the good faith

of her enemy would have reproached her foresight, would be to set a higher value on that quality than on consistency and good faith, and would sacrifice to a mere suspicion towards an enemy the plain obligations of justice towards a friendly power.

Great Britain has declined proceeding *pari passu* with France in the revocation of their respective edicts. She has held aloof, and claims of the States proof not only that France has revoked her decrees, but that she continues to act in conformity with the revocation.

To shew that the repeal is respected, it is deemed sufficient to state that not one vessel has been condemned by French tribunals, on the principles of those decrees since the first of November last. The New-Orleans Packet from Gibraltar to Bordeaux was detained but never condemned. The Grace Ann Green, from the same British port to Marseilles, was likewise detained but afterwards delivered up unconditionally to the owner, as was such part of the cargo of the N. O. Packet as consisted of the produce of the U. S. Both these vessels proceeding from a British port, carried cargoes, some articles of which in each, were prohibited by the laws of France, or admissible by the sanction of the government alone. It does not appear that their detention was imputable to any other cause. If imputable to the circumstance of passing from a British to a French port, or on account of any part of their cargoes, it affords no cause of complaint to G. Britain as a violation of our neutral rights. No such cause would be afforded, even in a case of condemnation. The right of complaint would have belonged to the U. States.

In denying the revocation of the decrees, so far as it is a proper subject of discussion between us, it might reasonably be expected that you would produce some examples of vessels taken at sea, in voyages to British ports, or on their return home, and condemned under them by a French tribunal. None such has been afforded by you. None such are known to this government.

You urge only as an evidence that the decrees are not repealed, the Speech of the Emperor of France to the Deputies from the free cities of Hamburg, Bremen and Lübeck; the Imperial Edict dated at Fontainebleau on the 19th Oct. 1810; the report of the French Minister of Foreign Affairs dated in December last, and a letter of the Minister of Justice to the President of the Council of Prizes of the 25th of that month.

There is nothing in the first of these papers incompatible with the revocation of the decrees, in respect to the United States. It is distinctly declared by the Emperor in his Speech to the Deputies of the Hanse Towns, that the blockade of the British Islands shall cease when the British blockades cease; and that the French blockade shall cease in favor of those nations in whose favor G. Britain revokes hers, or who support their rights against her pretension, as France admits the U. States will do by enforcing the non-importation act. The same sentiment is expressed in the report of the Minister of Foreign Affairs. The decree of Fontainebleau having no effect on the high seas, cannot be brought into this discussion. It evidently has no connection with neutral rights. The letter from the Minister of Justice, to the President of the Council of Prizes, is of a different character. It relates in direct terms to this subject, but not in the sense in which you understand it. After reciting the note from the Duke of Cadore of the 5th Aug. last, to the American Minister at Paris, which announced the repeal of the French decrees, and the proclamation of the President in consequence of it, it states that all causes arising under those decrees after the 1st of November, which were then before the court, or might afterwards be brought before it, should not be judged by the principles of the decrees, but be suspended until the 2d February, when the U. S. having fulfilled their engagements, the captures should be declared void, & the vessels and their cargoes delivered up to their owners. This paper appears to afford an unequivocal evidence of the revocation of the decrees, so far as relates to the U. States. By instructing the French tribunal to make no decision till the 2d of February, and then to restore the property to the owners, on a particular event which has happened, all cause of doubt on that point seems to be removed. The U. S. may justly complain of delay in the restitution of the

(For the conclusion of this Letter, see 4th page.)