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State Papers.

DOCUMENTS

Accompanying the President's Message.

CORRESPONDENCE

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

MR. MONROE TO MR. FOSTER.

Department of State, October 17, 1811.

SIR—I have the honor to communicate to you a copy of two letters from the Charge des Affaires of the United States at Paris, to their Charge des Affaires at London, and a copy of a correspondence of the latter with the Marquis of Wellesley on the subject. By this it will be seen, that Mr. Smith was informed by the Marquis of Wellesley, that he should transmit to you a copy of the communication from Paris, that it might have full consideration in the discussions depending here.

Although an immediate repeal was to have been expected from your government, on the receipt of this communication, if the new proof which it affords of the French repeal was satisfactory, yet it will be very agreeable to learn that you are now authorized to concur in an arrangement that will terminate both the orders in council and the non-importation act.

P. S. Hearing that you will not be in town for several days, this letter, and one bearing date on the 1st of this month, which I had prepared and intended to deliver to you on my return here, are forwarded by a special messenger.

MR. RUSSELL TO MR. J. S. SMITH.

Paris, 5th July, 1811.

SIR—I observe by your letter of the 7th ult. your solicitude to obtain evidence of the revocation of the Berlin and Milan Decrees.

On the 5th of August last the Duke of Cadore announced to General Armstrong, that these decrees were revoked, and that they would cease to operate on the first of Nov. Since the first of November these decrees have not, to my knowledge, in any instance, been executed to the prejudice of American property arriving since that time. On the contrary, the Grace Ann Green, coming clearly within the penal terms of those decrees, had they continued in force, was liberated in December last, and her cargo admitted in April. This vessel had indeed been taken by the English and retaken from them; but as this circumstance is not assigned here as the cause of the liberation of this property, it ought not to be presumed to have operated alone as such.

Whatever special reasons may be supposed for the release of the Grace Ann Green, that of the New-Orleans Packet must have resulted from the revocation of the French Edicts.

The New-Orleans Packet had been boarded by two English vessels of war, and had been some time at an English port, and thus doubly transgressed against the decrees of Milan. On arriving at Bordeaux, she was in fact seized by the Director of the Customs, and these very transgressions expressly assigned as the cause of seizure. When I was informed of this precipitate act of the officer at Bordeaux, I remonstrated against it on the sole ground that the decrees, under which it was made, had been revoked. This remonstrance was heard. All further proceedings against the New-Orleans Packet were arrested, and on the 9th of January, both the vessel and cargo were ordered to be placed at the disposition of the owners, on giving bond. This bond has since been cancelled by an order of the government, and thus the liberation of the property perfected. The N. Orleans packet has been some time waiting in the Garonne, with her return cargo on board, for an opportunity only of escaping the English orders in council.

I know of no other American vessel arrived voluntarily in the Empire of France or the kingdom of Italy, since the first of November, to which the decrees of Berlin and Milan could be applied.

MR. RUSSELL TO MR. SMITH.

Paris, 14th July, 1811.

SIR—I had the honor to address to you, on the 5th inst. a brief account of the Grace Ann Green and of the New-Orleans Packet. The proof of which these cases furnish, especially the latter, ought, when unopposed, as it is, by any con-

licting circumstance, to be considered as conclusive of the revocation of the French edicts, to which, if continued in force, these cases would have been liable. In addition however to their existence, I have now the satisfaction to communicate to you the liberation of the Two Brothers, the Good Intent and the Star, three American vessels captured since the first of Nov. and brought into this empire or into ports under its control. I should have no doubt been able to have announced the release, by one general decision, of every American vessel captured since that period, if the only enquiry were whether or not they had violated the Berlin and Milan decrees. Unfortunately, however, the practices of late years render the question of property extremely difficult to be satisfactorily decided amidst false papers and false oaths; after the most minute and tedious investigation, it often remains doubtful whether this property belongs to a neutral or an enemy. The time employed in this investigation has surely no connection with the Berlin and Milan decrees, and cannot be considered as evidence of their continuance.

It is possible that these decrees may be kept in force in their municipal character, and be applied for the confiscation of English merchandize on the continent—and to prevent their performing this function does not appear to be a concern of the United States, nor can the measure adopted in retaliation of it, on the part of England, be justly extended beyond its limits and made to reach an offending neutral power, which the act of her enemy does not affect.

It is sufficient for us that the Berlin and Milan decrees have ceased to be executed on the high seas, and if the orders in council still continue to operate there, they surely are not supported by any principle of the law of retaliation, but must be considered as a simple and unqualified violation of our neutral and national rights.

The proof now before you of the revocation of the Berlin and Milan decrees consists in the precise and formal declarations of this government, in its discontinuance to execute them to our prejudice in a single instance; in its having exempted from their operation every vessel forcibly brought in, since that time on which there has been a decision. After such evidence, to pretend to doubt of their revocation with regard to us would seem to be the result of something more than mere incredulity.

LORD WELLESLEY TO MR. J. S. SMITH.

Foreign Office, August 14, 1811.

SIR—Since the date of my last letter, I have the honor to inform you, that I have received a letter from Mr. Foster, his Majesty's minister in America, by which it appears that he had actually commenced a negotiation with the government of the United States, respecting the British Orders in Council. His dispatches containing the particulars of the negotiation have not yet reached me: Under these circumstances I have transmitted a copy of your letter, together with its enclosure, to Mr. Foster, in order that those documents may receive full consideration in the progress of the discussions, now depending in America.

MR. FOSTER TO MR. MONROE.

Washington, Oct. 22, 1811.

I had the honor to receive your letter of the 17th instant, together with its three enclosures, on the road between Baltimore and this city; I had that of receiving at the same time your letter dated Oct. 1, in answer to mine of the 25th of last July.

Not having had any dispatches from his Majesty's government lately, I have not as yet received the copy of the recent communication from Paris in regard to the supposed repeal of the French decrees which the Charge d'affaires of the U. States at London has intimated to you that he understood the Marquis Wellesley intended to transmit to me, and which I conclude is the same as that contained in the letter of Mr. Russell, the American Charge d'affaires in France. I am however in daily expectation of the arrival of his Majesty's packet boat, when it will in all probability reach me, and when if I should receive any fresh instructions in consequence I will not fail immediately to acquaint you. In the meanwhile, however, I beg you will permit me to make some remarks in reply to your letter of October 1, being extremely anxious to

do away the impression which you seem to have received relative to the demand I had made for the repeal of the non-importation act of the present year.

It is, I assure you sir, with very great regret that I find you consider that demand as involving in any degree propositions tending to degrade your nation. Such an idea certainly never existed with his Majesty's government, nor would it be compatible with the friendly sentiments entertained by them for the United States, neither could I have suffered myself to be the channel of conveying a demand which I thought had such a tendency. However you view the demand made on the part of G. Britain, I can safely say that it was made in consequence of its appearing to his Majesty's government on strong evidence that the chief of the French nation had really deceived America as to the repeal of his decrees, and in the hopes that the United States' government would therefore see the justice of replacing his country on its former footing of amicable relations with England, nothing appearing to be more natural than such an expectation, which seemed a necessary consequence of the disposition expressed by America to maintain her neutrality, and desirable in every other point of view. I cannot indeed bring myself to think, sir, that your candor would allow you, on a consideration, to put any other construction on the matter, and had my arguments had sufficient weight with you in showing that the French decrees were still in force, I cannot doubt but you would have agreed with me in the conclusion I drew; it would seem therefore only owing to your not viewing the deceitful conduct of the French government in the same light that it appears to his Majesty's government, that a difference of opinion exists between us as to the proposal I made, which under the conviction entertained by them was surely a very just and natural one.

From the earnest desire of vindicating myself and my government from the charge of making any degrading or unjust demands on that of America, I have taken the liberty to trouble you so far, and I will now proceed to shew why I thought you had misunderstood the passage of my letter which related to the extent in which the repeal of the French decrees was required by Great Britain. In the explanation which you desired on this point I gave you that which the Marquis Wellesley gave to Mr. Pinkney in answer to his letter of August 25th 1810, and I beg to refer you to the message of the President of the U. States on the opening of Congress in December 1810, for a proof that the demand of G. Britain in the extent in which I have stated it was known to your government several months ago; how was I therefore to suppose in the term innovations, as applied to the explanation given by me, that you could mean otherwise than some really new pretension on the part of G. Britain, such as that France should suffer British property to be carried into her ports for the purposes of trade? If the warmth I was betrayed into in endeavoring to refute a supposed imputation of this sort gave any offence, I sincerely regret it, and I will beg permission here to say, sir, that if unconsciously I have by any of my remarks led you to suppose they conveyed any improper insinuations, as one paragraph of your letter would appear to imply, I am most unfeignedly sorry for it, as I entertain the highest respect for you personally and for your government, and could only have meant what I wrote in the way of argument, or for the purpose of contrasting the proceedings of France in her conduct towards the United States with that of Great Britain.

In reverting to the extraordinary and unexampled situation of things that has arisen out of the war in Europe, it would seem needless to repeat the evidence there is that the lawless and unbounded ambition of the ruler of France has been the origin of it, and that it cannot be a secret to the U. States' government that his plan has been, and avowedly continues to be, not to scruple at the violation of any law, provided he can thereby overthrow the maritime power of England. Is it not therefore reasonable in Great Britain to distrust an ambiguous declaration of his having suddenly given up any part of a system which he thought calculated to produce such an effect? You say however that the decrees of Berlin and Milan are revoked, America, as not being at war and therefore not seeing warily into the views of France,

may be less scrupulous as to the evidence necessary to prove the fact; but sir, it surely cannot be expected that G. Britain, who is contending for every thing that is dear to her, should not require more proof on a point so material to her. It is undoubtedly a very desirable thing for the U. States to have a free and unrestricted trade with both belligerents, but the essential security & most important interests of America are not involved in the question as are those of G. Britain. France has levelled a blow which she hopes will prove deadly to the resources of G. Britain, and before the British government can with safety give up the measures of defence in consequence adopted by them, very strong proof must exist of the cessation by France of her novel and unprecedented measures.

I confess, sir, with the sincerest disposition to discover on the part of the ruler of France a return to the long established practice of warfare as exercised in civilized Europe, I have been unable to succeed; and if the French government had really meant to withdraw their obnoxious decrees, it is inconceivable why, instead of allowing their intention to be guessed at or inferred, they should not openly and in plain language have declared so; the decrees themselves having been clearly enough announced on their enactment, why should not their revocation be equally explicit.

While however numerous declarations have been made on the part of France of the continued existence of the decrees and captures made under them of neutral ships have occurred, a few of the American vessels seized since Nov. 1. have been restored, and the foregoing, a very small part of his plunder, is desired by Bonaparte to be considered as a proof of the sincerity of his revocation by America; but it must be recollected that besides the object of ruining the British resources by his own unauthorized regulations, he has also that of endeavoring to obtain the aid of the U. States for the same purpose, and herein you will, as I had the honor to remark in a former letter, be able to observe the cause of the apparently contradictory language held both by himself and his ministers.

I shall be extremely happy, to receive from you, sir, the information that in a frank and unambiguous manner the chief of the French government had revoked his decrees. Why he should not do so is inexplicable, if he means to revert to the ordinary rules of war, but while he exercises such despotic sway wherever his influence extends, to ruin the resources of England, it cannot be expected that G. Britain shall not use the means she possesses for the purpose of making him feel the pressure of his own system. There is every reason to believe that ere long the effects on the enemies of Great Britain will be such as irresistibly to produce a change which will place commerce on its former basis. In the mean time, sir, I hope you will not think it extraordinary if I should contend that the seizure of American ships by France, since November 1, and the positive and unqualified declarations of the French government are stronger proofs of the continued existence of the French decrees and the bad faith of the ruler of France, than the restoration of five or six vessels, too palpably given up for fallacious purposes or in testimony of his satisfaction at the attitude taken by America, is a proof of their revocation, or of his return to the principles of justice.

I will only repeat, sir, in answer to your observations on the late condemnation of the ships taken under His Majesty's Orders in Council, what I have already had the honor to state to you, that the delay which took place in their condemnation was not in consequence of any doubt existing in His Majesty's Government as to whether the French Decrees were revoked, as you seem to imagine, but in consequence of its being thought that the American government, upon its appearing that they were deceived by France, would have ceased their injurious measures against the British commerce. A considerable time elapsed before the decision took place on those ships, and there is no doubt but that had the U. S. government not persisted in their unfriendly attitude towards G. Britain on discovering the ill faith of France, a spirit of conciliation in His Majesty's government would have caused their release.

In reply to your observation on the pretensions of Great Britain relative to

the revocation of the French decrees, I beg to repeat that the sum of the demand made by England is that France should follow the established laws of warfare, as practised in former wars in Europe. Her ruler by his decrees of Berlin and Milan declared himself no longer bound by them; he has openly renounced them in his violent efforts to ruin the resources of Great Britain, and has trampled on the rights of independent nations to effect his purpose. If the French government make use of means of unprecedented violence to prevent the intercourse of England with unoffending neutrals, can it be expected that England should tamely suffer the establishment of such a novel system of war without retaliation, and endeavoring in her turn to prevent the French from enjoying the advantages of which she is unlawfully deprived.

Having explained already the situation in which the question of the blockade of May, 1806, rests, according to the views of his Majesty's government, and the desire of Great Britain to conduct her system of blockade according to the laws of nations, I will only advert to it on this occasion for the purpose of taking the liberty of acknowledging to you the very great pleasure I received from the highly honorable mark of respect which you have taken the occasion to express for the illustrious statesman from whose counsels that measure emanated.

I need not repeat to you, sir, what sincere satisfaction it would give me, if, without the sacrifice of the essential rights and interests of Great Britain, all the points in discussion between our two countries could be finally adjusted. I have the honor to be, &c.

A. J. FOSTER.

MR. MONROE TO MR. FOSTER.

Department of State, Oct. 29, 1811.

SIR—I had the honor to receive your letter of the 22d of this month, and to lay it before the President.

The assurance which you have given of your disposition to reciprocate, in our communications on the important subjects depending between our governments, the respectful attention which each has a right to claim, and that no departure from it was intended in your letter of 26th July, has been received with the satisfaction due to the frank and conciliatory spirit in which it was made.

I learn, however, with much regret, that you have received no instructions from your government founded on the new proof of the revocation of the Berlin and Milan decrees, which was communicated to the Marquis of Wellesley by the American Charge des Affaires at London, in a document of which I had the honor to transmit you a copy. It might fairly have been presumed, as I have before observed, that the evidence afforded by that document of the complete revocation of those decrees so far as they interfered with the commerce of the United States with the British dominions, would have been followed by an immediate repeal of the orders in council. From the reply of the Marquis of Wellesley, it was at least to have been expected that no time had been lost in transmitting that document to you, and that the instructions accompanying it would have manifested a change in the sentiments of your government on the subject. The regret therefore cannot but be increased, in finding that the communication which I had the honor to make to you has not even had the effect of suspending your efforts to vindicate the perseverance of your government in enforcing those orders.

I regret also to observe that the light in which you have viewed this document, and the remarks which you have made on the subject generally, seem to preclude any other view of the conditions on which those orders are to be revoked than those that were furnished by your former communications. You still adhere to the pretension that the productions and manufactures of G. Britain, when neutralised, must be admitted into the ports of your enemies. This pretension, however, vague the language heretofore held by your government, particularly the Marquis of Wellesley, in his communications with Mr. Pinkney on the subject, was never understood to have been embraced. Nothing indeed, short of the specific declarations which you have made would have induced a belief that such was the case.

I have the honor to be, &c.