



FRIDAY, JULY 3, 1812.

No. 667.

Vol. XIII.

State Papers.

To the Senate and House of Representatives of the United States.

I lay before Congress copies of letters which have passed between the Secretary of State and the Envoy Extraordinary and Minister Plenipotentiary of Great Britain.

JAMES MADISON.

June 8th, 1812.

CORRESPONDENCE

ON THE ORDERS IN COUNCIL

MR. FOSTER TO MR. MONROE.

Washington, June 4, 1812.

SIR—Since I had the honor of seeing you at your office yesterday, I have perceived an article in the public prints, stated to be extracted from an English newspaper, and purporting to be an official declaration of his Royal Highness the Prince Regent, that the Orders in Council will be and are absolutely revoked from the period of the Berlin and Milan decrees. Some authentic act of the French Government, publicly promulgated, be expressly and unconditionally repealed. A considerable time has now elapsed since by order of my government I had the honor of urging to you the expediency of procuring such an authentic act from the French Government, and in all probability the above declaration may have been issued in the confident expectation that the government of the U. States would have been able to produce it ere this.

At all events, sir, considering the important nature of the abovementioned article and the probability that I shall have soon to be the organ of some official communication to the American government in relation to it, I cannot but trust that no measure will mean while be adopted by the Congress, which would defeat the endeavor of procuring a complete reconciliation between our two countries.

Should any embarrassments arise in consequence of the declaration on the subject of the proposed revocation of the orders in council, above alluded to, resting at present upon a mere statement in the newspapers, it will no doubt occur to your recollection, that on the enactment of those orders a measure was taken by Congress for the purpose of meeting them when they were as yet known but through the public prints.

MR. FOSTER TO MR. MONROE.

Washington, June 4th, 1812.

SIR—I must rely upon your candor to feel for the embarrassment into which your note of this day (see last Register) has thrown me.

Willing to comply with the request contained in it, I yet cannot but be sensible that in making any portion of a dispatch from his Majesty's Secretary of State to me the subject of a correspondence between us, I should not be justified to my own government. I believe there is no example of a correspondence of such a nature, and I should be very loth to establish the precedent.

When I had the honor to make the communication of Lord Castlereagh's dispatch to you, in consequence of its being left to my own discretion to do so, I did it because I had reason to think, from the number of my letters which then remained unanswered at your office, such a communication, if made through a note, might have shared the fate of the rest. You will recollect that it was at your own request that I acceded to the dispatch being communicated to the President: and that it was also at your instance, as being the only regular way in which the subject could come before the American government, that I determined to write to you a note founded upon it. You were aware at the latter end of last week, that such was my determination, which I repeated to you through Mr. Graham who called upon me on the 30th ultimo, to ask me when I contemplated sending it to your office. The note must have reached you and been read before any message could have been sent from the Executive to Congress.

I cannot, sir, consider my note as liable to the charge of ambiguity which you now impute to it. The abandonment of our most important maritime rights is more extensively than ever connected by France with the demand of a repeal of our orders in council, and while you are entirely silent as to how far America concurs with her on this

point of vital interest to G. Britain, with out even a prospect of a reply from you to our just complaints, as expressed in my note on the coincidence of the attitude taken by America with the hostile system of France, I cannot but be aware of the difficulties to which I should expose myself in entering into an explanation on any insulated passage in it. I might, perhaps by continued silence on your part, never afterwards have an opportunity of making further explanation, and you are well aware how frequently points taken unconnected with what precedes or follows them are liable to misconstruction.

But, sir, a reason paramount to every other, for my not committing myself to an explanation on any single topic, without the discussion between us were to be continued, is the publication of the highly important declaration of his Royal Highness the Prince Regent, to which I had the honor to allude in my note to you of this morning. You will there find stated, in his explicit and authentic manner as language can convey, the grounds upon which his Majesty's orders in council will be revoked. I cannot, it is true, as yet, refer you officially to this document, but I may now be in the expectation of receiving it in a formal shape within a very few days, and together with it every explanation possible which you may require.

MR. MONROE TO MR. FOSTER.

Department of State, June 6, 1812.

SIR—I have had the honor to receive your letter of the 4th instant.—The receipt of that of May 30th has already been acknowledged.

As these letters relate to the same subject, the orders in council, I shall take both into view, in this reply.

I am not disposed to make any unnecessary difficulty, on account of the informality of the document alluded to in the last letter. If the declaration of the Prince Regent was such as to afford the satisfaction desired, it would be received, in any form entitled to credit, with great interest, as a token of just and friendly sentiments in your government towards the United States. But nothing is seen in that act, of the character which you impute to it. Without removing a single objection to the principle on which the orders in council were issued, and have been maintained, it affords a complete justification of the demand heretofore made on your government for their repeal.

The British government has complained that the U. States demanded the repeal of the orders in council on a conditional repeal of the French decrees, although the French condition required nothing of G. Britain which she ought not to have consented to; and was, moreover, a condition subsequent, and not precedent; and it now proposes to repeal the orders in council conditionally also, with this difference, that the condition on which their repeal is to be made, is a condition precedent and not subsequent, and is likewise one which G. Britain has no right to claim.

This condition requires that the French decrees shall be absolutely & unconditionally repealed, that is, that they shall be repealed according to explanations given, not only as they related to the United States, but as to all other neutral nations; and also as they prohibited a commerce in British manufactures, with the enemies of Great Britain.

So far as the French decrees violated the neutral commerce of the U. States, we had a right to demand a repeal of them. To that extent we did demand their repeal, and obtained it. The repeal was declared by an authentic and formal act of the French government, and communicated to this government by the minister plenipotentiary of the U. States at Paris, and to the British government by their minister plenipotentiary at London, and has moreover been officially published within the United States. The authenticity of the repeal was placed beyond all controversy, and the official manner in which it was communicated to your government ought to have been satisfactory to it. A general repeal of the French De-

crees in favor of all neutral nations, and of such parts of them as prohibited a trade with France and the countries under her control, in British manufactures, the United States have not demanded, because they had no right to demand it.

The United States have required of Great Britain no more than they required of France; namely, that her unlawful edicts should be repealed so far as they related to us. To a compliance with this demand your government has prescribed conditions, the mere recital of which is sufficient to shew their injustice. The United States can never suffer their rights to be violated by Great Britain because the commerce of her enemy is not regulated to suit her interest and policy.

If the Duke of Bassano's report to the Conservative Senate of France, published in a French newspaper, be sufficient evidence that the French decrees are now in force, it is not perceived on what ground the high evidence which has been afforded of their repeal could have been resisted.

It is further made a condition of the proposed repeal, by the declaration of the Prince Regent, that it shall take effect at a future uncertain day; and that the orders in council should be again in force on a contingency of which the British government is to be the sole judge. If this were a ground on which the U. States could call upon France to repeal her decrees in case they were still in force as to them, surely the French repeal, to take effect on a future specified day, and whose revival was not provided for on any contingency whatever, was a ground on which their call on Great Britain to repeal her orders in council in respect to the U. States, ought not to have been resisted.

In reply to your insinuation, that the demand made on your government to repeal its edicts which violate the neutral rights of the United States, is made in concert with France, to obtain from Great Britain an abandonment of her maritime rights, it is sufficient to refer you to documents which have been long before the public, and particularly to the letter of Mr. Pinkney to the Marquis Wellesley of January 14, 1812, protesting in the most pointed manner against looking to any other source for the opinions and principles of the U. States than to the United States themselves. Let me repeat, with respect to the orders in council, that all we demand is, that they cease to violate the neutral rights of the United States, which they have long violated and still violate on the high seas. Should they be continued as to France in any form which may not violate these rights, or as to any other neutral nation to which they may be applicable, it would be for such nation and not for the U. States to contend against them.

The report of the French minister on which this declaration of your government is founded, affords no proof that it violated its engagement to the United States, as to the repeal of the decrees. It evidently refers to the continental system, by the means relied on to enforce it. The armies of France can be of no avail either in the support or violation of maritime rights. This construction is the more justifiable from the consideration that it is supported by corresponding acts of the French government, continued from the time of the repeal, and by communications to the minister plenipotentiary of the U. States at Paris to the date of that report.

I beg you, sir, to be assured that it is painful to me to have imposed the least embarrassment on you, by the correspondence on the difference between the tenor of Lord Castlereagh's letter to you, and yours founded on it to me. I continue to persuade myself, however, that you will become sensible, that with a knowledge of the extent given by your government to the conditions on which alone its orders will be repealed, and that this extent was always contemplated by your government, it was impossible for the President to be inattentive to the fact, or to withhold it from the fe-

lislative branch of the government; I have to add, that had it been proper for him so to have done, the late hour at which your note was received, not till noon of the 1st inst. was not in time to be considered in relation to the message sent to Congress on that day.

(On the subject of Impressed Seamen.)

MR. FOSTER TO MR. MONROE.

Washington, June 1, 1812.

SIR—I have the honor to acknowledge the receipt of your letter of the 30th ult. in reply to my note of April 13, relating to a seaman who had been encouraged to desert from his Majesty's schooner Gleaner, by certain of the inhabitants of the city of Annapolis, and containing an offer, which I shall always be very happy to repeat, of using my best exertions to procure the discharge of such seamen as have been impressed on board his Majesty's ships and can be legally claimed by the government of the United States.

Mr. F. goes on to speak of this desertion from the Gleaner and then says,

"I have now, sir, the honor to lay before you, by order of his royal highness the Prince Regent, the enclosed papers (No. 1, 2, 3, 4, 5,) relating to English seamen who have been detained, against their will, on board of certain ships of war of the United States, which have of late visited Great Britain; and to express his royal highness's sincere belief, that these several sources of complaint have originated without the concurrence of participation of a state with which he is so anxious to preserve an amicable intercourse, as well as his conviction that the government of America has only to be informed of the fact to take prompt and satisfactory measures for the correction of the practice.

The American government will perceive from this friendly communication, that it is not on this side of the water alone that the inconvenience necessarily resulting from the similarity of habits, language and manners, between the inhabitants of the two countries, is productive of subjects of complaint and regret. These are, however, at the same time, natural and strong inducements for a conformity of interests, and most particularly for a readiness to give and receive mutual explanations upon all subjects of difference.

I have it in charge to repeat to you for the information of your government, that the government of his royal highness the Prince Regent will continue to give the most positive orders against the detention of American citizens on board his Majesty's ships; and that no difficulties, beyond what are requisite for clearly ascertaining the national character of individuals, whose cases are brought before the lords commissioners of the Admiralty, will be interposed to prevent or delay their immediate discharge.

Mr. F. concludes his letter with stating the case of the seaman Bowman said to be on board the Hornet.

MR. MONROE TO MR. FOSTER.

Department of State, June 8, 1812.

SIR—I have had the honor to receive your letter of June 1st, with the papers enclosed, relating to several British seamen who are stated to have entered into the naval service of the United States.

Without repeating what I had the honor to state to you in a personal interview respecting the deserter from the Gleaner, and the conduct of the armed party from that vessel who pursued him some distance into the country; I shall confine my remarks to your complaint of the detention of British seamen in American vessels, twenty-eight of whom are said to be on board the Constitution. Although the fact cannot have been admitted on the evidence produced, because it is contrary to the laws of the U. States, yet it will be enquired into. It is also possible that the seamen so detained, admitting the fact of their detention, may have become legally American citizens, in which case they must be protected as such. The government of the U. States can make no distinction between native and naturalized citizens, as has been already remarked to you. I repeat also, that your government cannot object to this rule, because a British statute naturalizes, *ipso facto*, all alien seamen who shall have been two years on board a British ship of war, and considers them, equally with natives, subject to the allegiance, & entitled to the protection of G. B.

The principal object of your letter seems to be, to find some analogy be-

tween the American practice with respect to seamen and the British practice, and to deduce from the former a justification of the latter. Permit me to note the difference, or rather contrast between them.

The regulations of the U. States prohibit the enlistment of all into their vessels of war. No such regulations exist on the side of Great Britain.

Enlistments, by force of impressment are contrary to the laws of the U. States. This mode of procuring crews for public ships is not only practised by G. Britain within her legal jurisdiction, but is extended to foreign vessels on the high seas, with abuses which aggravate the outrage to the nations to whom the vessels belong.

Most of the states composing our Union have enacted laws providing for the restoration of seamen abandoning the service of merchant vessels, to which they were bound by voluntary engagement. If no provision has been made for the surrender of deserters from public ships, it is because such deserters, although in many instances forced into the service, would be deemed malefactors and punishable as such; and it is not the practice of any country, particularly of G. Britain, to surrender malefactors without a stipulation, which is always reciprocal. In Great-Britain, we know from experience, that no provision exists for restoring American seamen to our merchant vessels, even to the fulfilment of their voluntary engagements; and if deserters from American ships of war are ever restored, it is by the courtesy, not the legal duty, or perhaps authority, of British naval commanders, and from the policy of recommending a practice, which, if mutual, must be evidently in favor of the British service, the desertion from it being so common, in comparison with that from the service of the U. S.

You observe that your government has charged you to state, that it will continue to give the most positive orders against the detention of American citizens on board British ships of war. If those orders were to prohibit the impressment of seamen from American vessels at sea, the great source of the evil, they would have been a welcome proof of its disposition to do justice and promote a good understanding between the two countries. Nothing short of this can be an adequate remedy; and the U. States are known to be ready to substitute to the practice the most liberal arrangements on the subject. But, suppose the orders to be given as signified, and in the latitude and form promising most efficacy, how could they restore that portion of the thousands of our citizens who have been impressed or passed into ships stationed or cruising in remote parts of the globe? But it is signified only that your government will continue to give orders against the detention of American citizens on board British ships of war. It follows that they are to be detained as heretofore, until formal proof can be produced to the British admiralty, in each particular instance, that the seaman is a native citizen of the U. States, the difficulty and delay in doing which are too obvious to need explanation. Nor is this the only cause of complaint. When such proof has been produced to the British admiralty, a direct refusal is made to the discharge of the seaman, if he has resided in Great-Britain, shall have married there, or shall have accepted the bounty given to seamen voluntarily entering the service, although for the most part the American seamen, after having been forced into the service, have accepted the bounty either to relieve their wants, or otherwise to alleviate their condition. I omit other causes of detention which might be mentioned. Add to the whole, that it is not sufficient to prove, that the seamen taken from American vessels are not subjects of Great Britain, nor the subjects of her enemy. It has been the invariable practice of the British cruisers to include in their impressments from American vessels the citizens and subjects of every neutral nation, even where it was known that they were such; and no instance, it is believed, can be given of the success of an application for the restoration of such neutral aliens to the service of the United States.

These observations cannot fail, as I presume, to satisfy you, sir, how little ground your government has for the complaints stated in your letter, and how much the U. States have for those they have so long and so strenuously, but at the same time so ineffectually, presented, in behalf of their injured marines.