



FRIDAY, JULY 23, 1813.

Vol. XIV.

OUR RELATIONS WITH FRANCE.

PRESIDENT'S MESSAGE.

To the House of Representatives of the U. S. I transmit to the House of Representatives a report of the Secretary of State, containing the information requested by their resolutions of the 21st of June last. JAMES MADISON.

Washington, July 12, 1813.

The Secretary of State, to whom was referred several resolutions of the House of Representatives of the 21st ult. requesting information on certain points relating to the French decree of the 28th of April, 1811, has the honor to make to the President the following report:—

In furnishing the information required by the House of Representatives, the Secretary of State presumes, that it might be deemed sufficient for him to state what is now demanded, what part of it has been heretofore communicated, and to supply the deficiency. He considers it however more conformable to the views of the House, to meet at this time, without regarding what has been already communicated, every enquiry, and to give a distinct answer to each, with the proper explanation relating to it.

The House of Representatives has requested information, when, by whom, and in what manner, the first intelligence was given to this government of the decree of the government of France—bearing date on the 28th April, 1811, and purporting to be a definitive repeal of the decrees of Berlin and Milan;—whether Mr. Russell, late Charge d'Affaires of the United States to the government of France, ever admitted or denied to his government the correctness of the declaration of the Duke of Bassano, to Mr. Barlow, as stated in Mr. Barlow's letter of the 12th May, 1812, to the Secretary of State, that the said decree had been communicated to his, Mr. Barlow's predecessor there, & to lay before the House any correspondence with Mr. Russell on that subject, which it may not be improper to communicate, and also any correspondence between Mr. Barlow and Mr. Russell in possession of the Department of State; whether the Minister of France to the U. S. ever informed this government of the existence of the said decree, and to lay before the House any correspondence with the said minister relative thereto, not improper to be communicated; with any other information in possession of the Executive, which he may not deem it injurious to the public interest to disclose, relative to the said decree, tending to shew at what time, by whom and in what manner, it was first made known to this government or to any of its representatives or agents; and lastly, to inform the House whether the government of the United States has ever received from that of France any explanation of the reason of that decree being conveyed from this government, and its minister, for so long a time after its date, and if such explanation has been asked by this government, and has been omitted to be given by that of France, whether this government has made any remonstrance or expressed any dissatisfaction to the government of France at such concealment.

These enquiries embrace two distinct objects. The first relates to the conduct of the government of France, in regard to this decree. The second, to that of the government of the United States. In satisfying the call of the House, on this latter point, it seems to be proper to meet it in a two-fold view; first, as it relates to the conduct of this government in this transaction; secondly, as it relates to its conduct towards both belligerents in some important circumstances connected with it. The resolutions do not call specially for a report of such extent, but as the measures of the Executive, and the acts of Congress, founded on communications from the Executive, which relate to one of the belligerents, have by necessary consequence an immediate relation to the other, such a report seems to be obviously comprised within their scope. On this principle the report is prepared; in the expectation, that the more full the information given on every branch of the subject, the more satisfactory will it be to the House.

The Secretary of State has the honor to report, in reply to these enquiries,

that the first intelligence which this government received of the French decree of the 28th April, 1811 was communicated by Mr. Barlow, in a letter bearing date on the 12th May, 1812, which was received by this department on the 13th July following: that the first intimation to Mr. Barlow, of the existence of that decree, as appears by the communication, was given by the Duke of Bassano, in an informal conference on some day between the 1st and 10th of May, 1812, and that the official communication of it to Mr. Barlow, was made on the 10th of that month at his request; that Mr. Barlow transmitted a copy of that decree, and of the Duke of Bassano's letter announcing it to Mr. Russell, in a letter of May 14th, in which he also informed Mr. Russell that the Duke of Bassano had stated that the decree had been duly communicated to him; that Mr. Russell replied, in a letter to Mr. Barlow of the 29th May, that his first knowledge of the decree was derived from his letter, and that he has repeatedly stated the same since to this government.

The Secretary of State reports also that no communication of the Decree of the 28th April, 1811, was ever made to this government by the minister of France or other person, than as is above stated, and that no explanation of the cause of its not having been communicated to this government and published at the time of its date, was ever made to this government, or, so far as it is informed, to the representatives or agents of the U. S. in Europe. The minister of France has been asked to explain the cause of a proceeding apparently so extraordinary and exceptionable, who replied that his first intelligence of that decree was received by the Wasp, in a letter from the Duke of Bassano of May 10th, 1812, in which he expressed his surprise, excited by Mr. Barlow's communication, that a prior letter of May, 1811, in which he had transmitted a copy of the decree for the information of this government, had not been received. Further explanations were expected from Mr. Barlow, but none were given. The light in which this transaction was viewed by this government was noticed by the President in his message to Congress, and communicated also by Mr. Barlow in a letter of the 14th July, 1812, with a view to the requisite explanation from the French government. On the 9th day of May, 1812, the Emperor left Paris for the North, & in two days thereafter the Duke of Bassano followed him. A negotiation for the adjustment of injuries, and the arrangement of our commerce, with the government of France, long depending, and said to have been brought nearly to a conclusion, at the time of Mr. Barlow's death, was suspended by that event. His successor, lately appointed, is authorized to resume the negotiation, and to conclude it. He is instructed to demand redress of the French government for every injury, and an explanation of its motive for withholding from this government a knowledge of the decree for so long a time after its adoption.

It appears by the documents referred to, that Mr. Barlow lost no time, after having obtained a knowledge of the existence of the French decree of the 28th April, 1811, in demanding a copy of it, and transmitting it to Mr. Russell, who immediately laid it before the British government, urging, on the ground of this new proof of the repeal of the French decrees, that the British orders in council should be repealed. Mr. Russell's note to Lord Castlereagh bears date on the 20th of May; Lord Castlereagh's reply on the 23d, in which he promised to submit the decree to the consideration of the Prince Regent. It appears, however, that no encouragement was given at that time to hope that the orders in council would be repealed in consequence of that decree; and that although it was afterwards made the ground of their repeal, the repeal was nevertheless to be ascribed to other causes. Their repeal did not take effect until the 23d of June, more than a month after the French decree had been laid before the British government; a delay indicating, in itself, at a period so momentous and critical, not merely neglect but disregard of the French decree. That the repeal of the orders in

Copies of these several communications are annexed to this Report; but as they have been heretofore published, we have omitted them.

council was not produced by the French decree, other proofs might be adduced. I will state one, which in addition to the evidence contained in the letters from Mr. Russell, herewith communicated, marked G, is deemed conclusive. In the communication of Mr. Barlow to Mr. Graham, on the 9th August, 1812, which was founded on instructions from his government, of as late date as the 17th June, in which he stated, that an official declaration would be sent to this country, proposing a conditional repeal of the orders in council, so far as they affected the U. S. no notice whatever was taken of the French decree. One of the conditions then contemplated was, that the orders in council should be revived at the end of eight months, unless the conduct of the French government and the result of the communications with the government of the U. S. should be such as in the opinion of the British government to render their revival unnecessary; a condition which proves inconceivably that the French decree was not considered by the British government a sufficient ground on which to repeal the orders in council. It proves also that on that day the British government had resolved not to repeal the orders on the basis of that decree;—since the proposed repeal was to depend not on what the French government had already done, but on what it might do, and on arrangements to be entered into with the U. S. unconnected with the French repeal.

The French decree of the 28th April, 1811, was transmitted to the U. States by the Wasp, a public vessel, which had been long awaiting at the ports of Great Britain and France, dispatches from the ministers relating to these very important concerns with both governments. It was received at the department of State on the 13th July, 1812, nearly a month after the declaration of war against Great Britain. Intelligence of the repeal of the orders in council was not received until about the middle of the following month. It was impossible, therefore, that either of those acts, in whatever light they might be viewed, should be taken into consideration, or have had any influence in deciding on that important event.

Had the British government been disposed to repeal its orders in council, in conformity with the principle on which it professed to have issued them, and on the condition which it had itself prescribed, there was no reason to delay the repeal until such a date as that of the 28th April, 1811, should be produced. The declaration of the French government of August 5, 1810, had fully satisfied every claim of the British government according to its own principles on that point. By its decrees of Berlin and Milan were declared to be repealed, the repeal to take effect on the 1st November following, on which day it did take effect. The only condition attached to it, was, either that Great Britain should follow the example, and repeal her orders in council, or that the United States should carry into effect against her their non-importation act. This condition was in its nature subsequent, not precedent, reserving a right in France to revive her decrees in case neither alternative was performed. By this declaration it was put completely in the power of Great Britain to terminate this controversy in a manner the most honorable to herself. France had yielded to her the ground on a condition which she had declared her willingness to comply. Had she complied, the non-importation act would not have been carried into effect, nor could the French decrees have been revived. By her refusal to repeal her orders in council, she has made herself responsible for all that has since followed.

By the decree of the 28th April, 1811, the decrees of Berlin and Milan, were said to be definitively repealed; and the execution of the non-importation act against Great Britain was declared to be the ground of that repeal. The repeal announced by the declaration of the 5th August, 1810, was absolute and final, except as to the condition subsequent attached to it. This latter decree acknowledges that that condition had been performed, and disclaims the right to revive it, in consequence of that performance, and, extending back to the first of November, confirms in every circumstance the preceding repeal. The latter act, therefore, as to the repeal, is nothing more than a confirmation of the former. It is in this sense that those two acts are to be understood in France.

It is in the same sense that they are to be regarded by other powers.

In repealing the orders in council on the pretext of the French decree of the 28th April, 1811, the British government has conceded that it ought to have repealed them on the declaration of the 5th of August 1810. It is impossible to discriminate between the two acts, or to separate them from each other so as to justify, on sound and consistent principles, the repeal of the orders in council on the ground of one act, and the refusal to repeal them on that of the other. The second act makes the repeal definitive; but for what reason? Because the non-importation act had been put in force against Great Britain, in compliance with the condition subsequent attached to the former repeal, and her refusal to perform it. That act being still in force, and the decree of the 28th April, 1811, being expressly founded on it, Great Britain repeals her orders in council on the basis of this latter decree. The conclusion is, therefore, irresistible, that by this repeal, under all the circumstances attending it, the British government has acknowledged the justice of the claim of the U. States to a repeal on the former occasion. By accepting the latter repeal, it has sanctioned the preceding one; it has sanctioned also the conduct of this government in carrying into effect the non-importation act against Great Britain founded on the preceding repeal.

Other important consequences result from this repeal of the British government. By fair and obvious construction the acceptance of the decree of the 28th April, 1811, as the ground of the repeal of the orders in council, ought to be construed to extend back to the 1st Nov. 1810, the day on which the preceding repeal took effect. The Secretary of State has full confidence, that if the question could be submitted to the judgment of an impartial judicial tribunal, such would be its decision. He has equal confidence that such will be the judgment pronounced on it by the enlightened and impartial world. However, these two acts could be separated from each other, so as that the latter might be made the basis of the repeal of the orders in council, distinct from the former, it follows that, bearing date on the 28th April, 1811, the repeal ought to have relation to that date. In legal construction, between nations as well as individuals, acts, are to be rescinded from the time they begin to operate, and where they impose a moral or political obligation on another party, that obligation commences with the commencement of the act. But it has been urged that the French decree was not promulgated, or made known to the British government, until a year after its date. This objection has no force. By accepting an act bearing date a year before it was promulgated, it is admitted that in the interval nothing was done repugnant to it. It cannot be presumed that any government would accept from another, as the basis on which it was to found an important measure, an act of anterior and remote date, pledging itself to a certain course of conduct which that government had in the interval departed from, and violated. If any government had violated an act the injunctions of which it was bound to observe by an interior one, in relation to a third party, and which it professed to have observed, before its acceptance by the other, it could not be presumed that it would cease to violate it after the acceptance. The conclusion is irresistible, that if the government did accept such an act with a knowledge of its antecedent violation, as the foundation of any measure, on its own part, that such act must have been the ostensible only, and not the real motive of such measure.

The declaration of the Prince Regent of the 21st April 1811, is in full confirmation of these remarks. By this act of the British government it is formally announced, on the authority of a report of the Secretary of Foreign Affairs to the Conservative Senate of France, that the French decrees were still in force, and that the orders in council should not be repealed. It cannot fail to excite considerable surprise that the British government should immediately afterwards, that is, on the 23d June, repeal its orders in council, on the ground of the French decree of the 28th April 1811. By this proceeding the British government has involved itself in manifest inconsistency. It has maintained by one act, that the French decrees were in full force, and

by another that they were repealed during the same space of time. It admits also, that by no act of the French government or its cruisers, had any violation of the repeal announced by the declaration of the French government of the 5th August 1810, been committed, or at least, that such violation had not had sufficient weight to prevent the repeal of the orders in council.

It was objected that the declaration of the French government of the 5th of August 1810, was not such an act as the British government ought to have regarded. The Secretary of State is thoroughly satisfied that this objection is altogether unfounded. It was communicated by the Emperor through his highest official organ, the Secretary of Foreign Affairs, to the minister plenipotentiary of the U. States at Paris. It is impossible to conceive an act more formal, authentic or obligatory on the French government than that alluded to. Does one government ever ask or expect from another to secure the performance of any duty, however important, more than its official pledge, fairly and fully expressed? Can better security be given for its performance? Had there been any doubt on this subject, the conduct of Great Britain herself, in similar cases, would have completely removed it. The whole history of her diplomatic intercourse with other powers, on the subject of blockade, is in accord with this proceeding of the French government. We know that when her government institutes a blockade, the Secretary of Foreign Affairs announces it to the ministers of other powers at London; and that the same form is observed when they are revoked. Nor was the authenticity of either act, thus announced, ever questioned.

Had a similar declaration been made by the minister of France in the United States to this government, by the order of his own, would it not have been entitled to respect, and been respected? By the usage of nations such respect could not have been withheld. The arrangement made with Mr. Erskine is a full proof of the good faith of this government, and of its impartiality, in its transactions with both the belligerents. It was made with that minister on the ground of his public character, and the confidence due to it, on which basis the non-intercourse was removed as to England and left in full force against France. The failure of that arrangement was imputable to the British government alone, who, in rejecting it, took on itself a high responsibility, not simply, in regard to the consequences attending it, but in disavowing and annulling the act of its minister, without shewing that he had exceeded his authority. In accepting the declaration of the French minister of foreign affairs, in proof of the French repeal, the United States gave no proof of improper credence to the government of France. On a comparison of both transactions, it will appear that if a marked confidence and respect was shown to either government, it was to that of Great Britain. In accepting the declaration of the government of France in the presence of the Emperor, the U. States stood on more secure ground, than in accepting that of a British minister in this country.

To the demand made by the United States of the repeal of the British orders in council founded on the basis of the French repeal, of August 5, 1810, the British government replied, by demanding a copy of the orders issued by the French government for carrying into effect that repeal; a demand without example in the intercourse between nations. By this demand it ceased to be a question whether the French repeal was of sufficient extent, or was founded on justifiable conditions. The pledge of the French government was doubted; a security was to be instituted as to the manner in which it was to be discharged, and its faith preserved, not by the subsequent conduct of its cruisers towards the vessels of the U. States, but by a copy of the orders given to its cruisers. Where would this end? If the French government intended a fraud, by its declaration of repeal announced to the minister of the United States, and afterwards to this government, might it not likewise commit a fraud in any other communication which it might make? If credit was refused by the British government to the act of the French government, thus formally announced is it probable that it would

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