

135-12



THREE MESSAGES,

FROM

THE PRESIDENT OF THE UNITED STATES,

TO

CONGRESS,

IN NOVEMBER 1811,

Together with

DOCUMENTS

ACCOMPANYING THE SAME.

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1812.

THREE MESSAGES

FROM

THE PRESIDENT OF THE UNITED STATES,

&c. &c.

—

FELLOW CITIZENS OF THE SENATE, AND OF THE

HOUSE OF REPRESENTATIVES,

J. Brettell, Printer,
Marshall-Street, Golden-Square, London.

THREE MESSAGES

FROM

THE PRESIDENT OF THE UNITED STATES,

&c. &c.



At a Meeting of the Two Houses of Congress, at the commencement of the first Session of the Twelfth Congress, the following Message was delivered from the President of the United States.

FELLOW CITIZENS OF THE SENATE, AND OF THE HOUSE OF REPRESENTATIVES,

IN calling you together sooner than a separation from your homes would otherwise have been required, I yielded to considerations drawn from the posture of our foreign affairs; and in fixing the present, for the time of your meeting, regard was had to the probability of further developments of the policy of the Belligerent Powers towards this country, which might the more unite the national councils in the measures to be pursued.

At the close of the last session of Congress, it was hoped that the successive confirmations of the extinction of the French decrees, so far as they violated our neutral commerce, would have induced the government of Great Britain to repeal its orders in

council; and thereby authorise a removal of the existing obstructions to her commerce with the United States.

Instead of this reasonable step towards satisfaction and friendship between the two nations, the orders were, at a moment when least to have been expected, put into a more rigorous execution; and it was communicated through the British Envoy just arrived, that whilst the revocation of the edicts of France, as officially made known to the British government, was denied to have taken place, it was an indispensable condition of the repeal of the British orders, that commerce should be restored to a footing that would admit the productions and manufactures of Great Britain, when owned by neutrals, into markets shut against them by her enemy: the United States being given to understand, that in the mean time a continuance of their non-importation act would lead to measures of retaliation.

At a later date it has indeed appeared that a communication to the British government, of fresh evidence of the repeal of the French decrees against our neutral trade, was followed by an intimation that it had been transmitted to the British Plenipotentiary here, in order that it might receive full consideration in the depending discussions. This communication appears not to have been received. But the transmission of it hither, instead of founding on it an actual repeal of the orders, or assurances that the repeal would ensue, will not permit us to rely on any effective change in the British Cabinet. To be ready to meet with cordiality satisfactory proofs of such a change, and to proceed, in the mean time, in adapting our measures to the views which have been disclosed through that minister, will best consult our whole duty.

In the unfriendly spirit of those disclosures, indemnity and redress for other wrongs have continued to

be withheld, and our coasts and the mouths of our harbours have again witnessed scenes, not less derogatory to the dearest of our national rights, than vexatious to the regular course of our trade.

Among the occurrences produced by the conduct of British ships of war hovering on our coasts, was an encounter between one of them and the American frigate commanded by Captain Rodgers, rendered unavoidable on the part of the latter by a fire, commenced without cause by the former, whose commander is therefore alone chargeable with the blood unfortunately shed in maintaining the honour of the American flag. The proceedings of a court of inquiry, requested by Captain Rodgers, are communicated, together with the correspondence relating to the occurrence between the Secretary of State and his Britannic Majesty's Envoy. To these are added, the several correspondences which have passed on the subject of the British orders in council: and to both, the correspondence relating to the Floridas, in which Congress will be made acquainted with the interposition which the government of Great Britain has thought proper to make against the proceedings of the United States.

The justice and fairness which have been evinced on the part of the United States towards France, both before and since the revocation of her decrees, authorised an expectation that her government would have followed up that measure by all such others as were due to our reasonable claims, as well as dictated by its amicable professions. No proof, however, is yet given of an intention to repair the other wrongs done to the United States; and particularly to restore the great amount of American property seized and condemned under edicts which, though not affecting our neutral relations, and therefore not entering into questions between the United States and other belligerents, were nevertheless founded in such unjust prin-

ciples, that the reparation ought to have been prompt and ample.

In addition to this, and other demands of strict right on that nation, the United States have much reason to be dissatisfied with the rigorous and unexpected restrictions, to which their trade with the French dominions has been subjected; and which, if not discontinued, will require at least corresponding restrictions on importations from France into the United States.

On all those subjects our minister plenipotentiary, lately sent to Paris, has carried with him the necessary instructions; the result of which will be communicated to you; and by ascertaining the ulterior policy of the French government towards the United States will enable you to adapt to it that of the United States towards France.

Our other foreign relations remain without unfavourable changes. With Russia, they are on the best footing of friendship. The ports of Sweden have afforded proofs of friendly dispositions towards our commerce, in the councils of that nation also. And the information from our special minister to Denmark shews that the mission had been attended with valuable effects to our citizens, whose property had been so extensively violated and endangered by cruisers under the Danish flag.

Under the ominous indications which commanded attention, it became a duty to exert the means committed to the executive department, in providing for the general security. The works of defence on our maritime frontier have accordingly been prosecuted with an activity, leaving little to be added for the completion of the most important ones; and, as particularly suited for co-operation in emergencies, a portion of the gun-boats have, in particular harbours, been ordered into use. The ships of war before in commission, with the addition of a frigate, have been

chiefly employed as a cruising guard to the rights of our coast. And such a disposition has been made of our land forces, as was thought to promise the services most appropriate and important. In this disposition is included a force, consisting of regulars and militia, embodied in the Indiana territory, and marched towards our north-western frontier. This measure was made requisite by several murders and depredations committed by Indians; but more especially by the menacing preparations and aspect of a combination of them on the Wabash, under the influence and direction of a fanatic of the Shawanese tribe.—With these exceptions, the Indian tribes retain their peaceable dispositions towards us, and their usual pursuits.

I must now add, that the period is arrived, which claims from the legislative guardians of the national rights a system of more ample provisions for maintaining them. Notwithstanding the scrupulous justice, the protracted moderation, and the multiplied efforts, on the part of the United States, to substitute, for the accumulating dangers to the peace of the two countries, all the mutual advantages of re-established friendship and confidence; we have seen that the British Cabinet perseveres, not only in withholding a remedy for other wrongs so long and so loudly calling for it; but in the execution, brought home to the threshold of our territory, of measures which, under existing circumstances, have the character, as well as the effect, of war on our lawful commerce.

With this evidence of hostile inflexibility, in trampling on rights which no independent nation can relinquish, Congress will feel the duty of putting the United States into an armour and an attitude demanded by the crisis, and corresponding with the national spirit and expectations.

I recommend, accordingly, that adequate provision be made for filling the ranks and prolonging the en-

listments of the regular troops; for an auxiliary force, to be engaged for a more limited term; for the acceptance of volunteer corps, whose patriotic ardour may court a participation in urgent services; for detachments, as they may be wanted, of other portions of the militia; and for such a preparation of the great body, as will proportion its usefulness to its intrinsic capacities. Nor can the occasion fail to remind you of the importance of those military seminaries, which, in every event, will form a valuable and frugal part of our military establishment.

The manufacture of cannon and small arms has proceeded with due success, and the stock and resources of all the necessary munitions are adequate to emergencies. It will not be inexpedient, however, for Congress to authorise an enlargement of them.

Your attention will of course be drawn to such provisions, on the subject of our naval force, as may be required for the services to which it may be best adapted. I submit to Congress the seasonableness also of an authority to augment the stock of such materials as are imperishable in their nature, or may not at once be attainable.

In contemplating the scenes which distinguish this momentous epoch, and estimating their claims to our attention, it is impossible to overlook those developing themselves among the great communities which occupy the southern portion of our own hemisphere, and extend into our neighbourhood. An enlarged philanthropy, and an enlightened forecast, concur in imposing on the national councils an obligation to take a deep interest in their destinies; to cherish reciprocal sentiments of good will; to regard the progress of events; and not to be unprepared for whatever order of things may be ultimately established.

Under another aspect of our situation, the early attention of Congress will be due to the expediency of further guards against evasions and infractions of

our commercial laws. The practice of smuggling, which is odious every where, and particularly criminal in free governments, where, the laws being made by all for the good of all, a fraud is committed on every individual, as well as on the state, attains its utmost guilt, when it blends with a pursuit of ignominious gain, a treacherous subserviency in the transgressors to a foreign policy, adverse to that of their own country. It is then that the virtuous indignation of the public should be enabled to manifest itself, through the regular animadversions of the most competent laws.

To secure greater respect to our mercantile flag, and to the honest interests which it covers, it is expedient also, that it be made punishable in our citizens to accept licences from foreign governments, for a trade unlawfully interdicted by them to other American citizens; or to trade under false colours or papers of any sort.

A prohibition is equally called for against the acceptance, by our citizens, of special licences, to be used in a trade with the United States; and against the admission into particular ports of the United States, of vessels from foreign countries, authorised to trade with particular ports only.

Although other objects will press more immediately on your deliberations, a portion of them cannot but be well bestowed on the just and sound policy of securing to our manufactures the success which they have attained, and are still attaining, in some degree, under the impulse of causes not permanent, and to our navigation, the fair extent, of which it is at present abridged by the unequal regulations of foreign governments.

Besides the reasonableness of saving our manufacturers from sacrifices which a change of circumstances might bring on them, the national interest requires that, with respect to such articles at least as

belong to our defence and our primary wants, we should not be left in unnecessary dependance on external supplies; and while foreign governments adhere to the existing discriminations in their ports against our navigation, and an equality or lesser discrimination is enjoyed by their navigation in our ports, the effect cannot be mistaken, because it has been seriously felt by our shipping interests; and in proportion as this takes place, the advantages of an independent conveyance of our products to foreign markets, and of a growing body of mariners, trained by their occupations for the service of their country in times of danger, must be diminished.

The receipts into the Treasury, during the year ending on the 30th of September last, have exceeded thirteen millions and a half of dollars, and have enabled us to defray the current expenses, including the interest on the public debt, and to reimburse more than five millions of dollars of the principal, without recurring to the loan authorized by the act of the last session. The temporary loan obtained in the latter end of the year one thousand eight hundred and ten, has also been reimbursed, and is not included in that amount.

The decrease of revenue, arising from the situation of our commerce, and the extraordinary expenses which have and may become necessary, must be taken into view, in making commensurate provisions for the ensuing year. And I recommend to your consideration the propriety of ensuring a sufficiency of annual revenue, at least to defray the ordinary expenses of government, and to pay the interest on the public debt, including that on new loans which may be authorized.

I cannot close this communication without expressing my deep sense of the crisis in which you are assembled, my confidence in a wise and honourable result to your deliberations, and assurances of

the faithful zeal with which my co-operating duties will be discharged; invoking, at the same time, the blessing of Heaven on our beloved country, and on all the means that may be employed in vindicating its rights and advancing its welfare.

(Signed)

JAMES MADDISON.

For the Documents accompanying this Message, vide p. 25, & seq.

MESSAGE.

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

I NOW lay before Congress, two letters to the department of state ; one from the present plenipotentiary of France, the other from his predecessor ; which were not included among the documents accompanying my message of the fifth instant, the translation of them being not then completed.

JAMES MADISON.

November 7, 1811.

Translation of a letter from General Turreau to the Secretary of State, dated

NOVEMBER 14, 1810.

SIR,

Although you may have been already informed, through another official channel, of the repeal of the decrees of Berlin and Milan, it is agreeable to me to have to confirm to you this new liberal disposition of my court towards the government of the States of the Union.

You will recollect, without doubt, sir, that these decrees were adopted in retaliation for the multiplied measures of England against the rights of neutrals,

and especially against those of the United States : and after this new proof of deference to the wishes of your government, his majesty the Emperor has room to believe, that it will make new efforts to withdraw the American commerce from the yoke which the prohibitory acts of Great Britain have imposed upon it. You will at the same time observe, sir, that the clearly expressed intention of my government is, that the renewal of commercial intercourse between France and the United States cannot alter the system of exclusion adopted by all Europe, against all the products of the soil or of the manufactures of England or her colonies : a system, the wisdom and advantages of which are already proved by its developement and its success ; and of which, also, the United States, as an agricultural and commercial power, have a particular interest in aiding in, and hastening the completion. Moreover, sir, this measure of my government, and those which yours may think proper to adopt, will prove the inutility of the efforts of the common enemy to break the ties of friendship which a humane and generous policy has necessarily formed between France and the United States, and which the actual crisis ought to draw closer. We ought hereafter, sir, to hope, or rather we may be assured, that new relations still more close and more friendly are about to be formed between Americans and Frenchmen, and that these two people will be more than ever convinced, that their glory, their interest and their happiness must eternally consecrate the principle and the conservation of these relations.

I seize with eagerness this occasion, sir, of renewing to you the assurance of my high consideration.

(Signed)

TURREAU.

Mr. Serrurier to the Secretary of State.

WASHINGTON, JULY 23, 1811.

SIR,

The new dispositions of your government, expressed in the supplementary act of the 2d of March last, having been officially communicated to my court by the *chargé d'affaires* of the United States; his imperial majesty, as soon as he was made acquainted with them, directed that the American vessels sequestered in the ports of France since the 2d of November should be released. Their cargoes have been admitted, and some of them have departed, upon conforming with the municipal laws of the country; that is to say, by exporting wines, silks, and the products of French manufactures. Orders were to be given at the same time, that all American vessels coming from the United States and loaded with merchandise the growth of the country, should be admitted and received in all the ports of France.

I hasten, sir, according to the orders I have received, to make these dispositions known to your government.

In order to prevent all difficulty in relation to the cargoes of vessels, the table indicating the merchandise of the growth of the United States has been prepared; and it has been thought that a rule could not be adopted more favourable and more sure, than the statement itself of the exportations made by the Americans during the year which preceded the embargo, viz. from the 1st October, 1806, to the 30th September, 1807, a period during which your commerce of exportation was in full activity. I annex this table to my letter. Coffee, sugar, and cocoa, are not included in this statement. These articles of merchandise have always been ranged in the class of colonial products; and, whatever may be their origin, his

majesty, while favouring in his states many branches of culture and many new establishments, with a view of supplying their place by indigenous productions, could not encourage indefinitely their exportation. Vessels arriving with permits, by means of which the importation of merchandise of this sort is authorized, will be admitted.

The introduction of tobacco is not prohibited. It forms the first object of culture of some of the States of the Union; and his majesty, having an equal interest in the prosperity of all, desires that the relations of commerce should be common to all parts of the federal territory. But tobacco is under an administration (*en régie*) in France; the administration is the only consumer, and can purchase only the quantity necessary for its consumption. It became necessary that measures should be taken upon this subject, and they have been conformable to the common interest. Tobacco will be received in the ports of France, and placed in actual deposit (*en entrepôt réel*); and if more arrives than the administration can purchase, the transit of the surplus will be permitted across France, for Germany, and the other states of Europe in which the American merchants may find a sale for it.

All the vessels of the United States which may arrive in France will have to discharge the custom-house duties, to which the merchandise they may bring is subject; and their return must be effected by exporting an equal value in French wines, silks, and other articles of French manufacture, in the proportions determined by the regulations.

Merchandise of the growth of the United States, composing the cargoes of American vessels, must be accompanied with a certificate of origin, delivered by the French consul of the port from whence the vessel departed.

I flatter myself, sir, that the communication of

these dispositions of the Emperor in favour of American commerce, will be as agreeable to your government as it is to me to be the means of making it.

I have the honour, sir, to renew to you the assurance of my high consideration.

The Minister of France,
SERRURIER.

Mr. Monroe, Secretary of State.

Productions of the soil and of the manufactures of the United States, exported from the 1st of October, 1806, to the 30th of September, 1807.

- | | |
|---------------------------|--|
| Salt or smoked fish, | Tobacco, |
| Dried or pickled do. | Flax-seed, |
| Whale and other fish oil, | Hops, |
| Whalebone, | Wax, |
| Spermaceti candles, | Household furniture, |
| Staves and heading, | Coaches and other carriages, |
| Shingles, | Hats, |
| Hoops, | Saddlery, |
| Plank, | Boots, |
| Timber, | Shoes....silk and leather, |
| Lumber of all kinds, | Beer, porter, and cider, in casks and bottles, |
| Masts and spars, | Beef, |
| Manufactures of wood, | Tallow, |
| Oak bark and other dyes, | Hides, |
| Tar, | Horned cattle, |
| Pitch, | Pork, |
| Rosin, | Hams and bacon, |
| Turpentine, | Lard, |
| Skins and furs, | Hogs, |
| Ginseng, | Butter, |
| Barley, | Cheese, |
| Buck-wheat, | Pot and pearl ashes, |
| Beans, | Horses, |
| Peas, | Mules, |
| Apples, | Sheep, |
| Potatoes, | Poultry, |
| Rice, | Mustard, |
| Indigo, | |

- Cotton,
- Wheat,
- Flour,
- Rye meal,
- Buck-wheat meal,
- Biscuit, or ship bread,
- Indian corn,
- Indian meal,
- Rye,
- Oats,
- Spirits from grain,
- Starch,
- Candles,
- Soap,
- Wax candles,
- Hair-powder,
- Snuff,
- Tobacco manufactured,

- Bricks,
- Essence of Bark,
- Linseed oil,
- Spirits of turpentine,
- Cards....wool and cotton,
- Maple and other brown sugar,
- Bar iron,
- Nails,
- Castings,
- Canvas and sail-cloth,
- Cables and cordage,
- Spirits from molasses,
- Refined sugar,
- Chocolate,
- Gun-powder,
- Copper manufactured,
- Medicinal drugs.

[TRUE COPY.]

The Minister of Foreign Relations,

(Signed) THE DUKE OF BASSANO.

MESSAGE.

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

I COMMUNICATE to Congress, copies of a correspondence between the envoy extraordinary and minister plenipotentiary of Great Britain and the secretary of state, relative to the aggression committed by a British ship of war on the United States frigate Chesapeake; by which it will be seen that that subject of difference, between the two countries, is terminated by an offer of reparation which has been acceded to.

JAMES MADISON.

Washington, November 13, 1811.

CORRESPONDENCE

BETWEEN

MR. FOSTER AND MR. MONROE.

Mr. Foster to Mr. Monroe.

WASHINGTON, Oct. 30, 1811.

SIR,

I had already the honour to mention to you, that I came to this country furnished with instructions from his royal highness the prince regent, in

the name and on the behalf of his majesty, for the purpose of proceeding to a final adjustment of the differences which have arisen between Great Britain and the United States of America in the affair of the Chesapeake frigate; and I had also that of acquainting you with the necessity under which I found myself of suspending the execution of those instructions, in consequence of my not having perceived that any steps whatever were taken, by the American government, to clear up the circumstances of an event which threatened so materially to interrupt the harmony subsisting between our two countries, as that which occurred in the month of last May between the United States' ship President and his majesty's ship Little Belt, when every evidence before his majesty's government seemed to shew, that a most violent and wanton outrage had been committed on a British sloop of war by an American commodore.

A court of inquiry, however, as you informed me in your letter of the 11th instant, has since been held, by order of the president of the United States, on the conduct of commodore Rodgers, and this preliminary to further discussion on this subject being all that I asked, in the first instance, as due to the friendship subsisting between the two states, I have now the honour to acquaint you that I am ready to proceed, in the truest spirit of conciliation, to lay before you the terms of reparation which his royal highness has commanded me to propose to the United States' government, and only await to know when it will suit your convenience to enter upon the discussion.

I have the honour to be, &c.

(Signed)

AUG. J. FOSTER.

The honourable James Monroe, &c.

Mr. Monroe to Mr. Foster.

DEPARTMENT OF STATE,
October 31, 1811.

SIR,

I have just had the honour to receive your letter of the 30th of this month.

I am glad to find that the communication which I had the honour to make to you on the 11th instant, relative to the court of inquiry, which was the subject of it, is viewed by you in the favourable light which you have stated.

Although I regret that the proposition you now make in consequence of that communication has been delayed to the present moment, I am ready to receive the terms of it whenever you may think proper to communicate them. Permit me to add, that the pleasure of finding them satisfactory will be duly augmented, if they should be introductory to a removal of all the differences depending between our two countries, the hope of which is so little encouraged by your past correspondence. A prospect of such a result will be embraced, on my part, with a spirit of conciliation equal to that which has been expressed by you.

I have the honour, &c.

(Signed) JAMES MONROE.

Augustus J. Foster, &c.

Mr. Foster to Mr. Monroe.

WASHINGTON, November 1, 1811.

SIR,

In pursuance of the orders which I have received from his royal highness the prince regent, in the name and on the behalf of his majesty, for the purpose of proceeding to a final adjustment of the

differences which have arisen between Great Britain and the United States in the affair of the Chesapeake frigate, I have the honour to acquaint you, first, that I am instructed to repeat to the American government the prompt disavowal made by his majesty (and recited in Mr. Erskine's note of April 17, 1809, to Mr. Smith) on being apprized of the unauthorized act of the officer in command of his naval forces on the coast of America, whose recall from a highly important and honourable command immediately ensued, as a mark of his majesty's disapprobation.

Secondly, that I am authorized to offer, in addition to that disavowal, on the part of his royal highness, the immediate restoration, as far as circumstances will admit, of the men who, in consequence of admiral Berkeley's orders, were forcibly taken out of the Chesapeake, to the vessel from which they were taken; or if that ship should be no longer in commission, to such sea-port of the United States as the American government may name for the purpose.

Thirdly, that I am also authorized to offer to the American government a suitable pecuniary provision for the sufferers in consequence of the attack on the Chesapeake, including the families of those seamen who unfortunately fell in the action, and of the wounded survivors.

These honourable propositions, I can assure you, sir, are made with the sincere desire that they may prove satisfactory to the government of the United States, and I trust they will meet with that amicable reception which their conciliatory nature entitles them to. I need scarcely add, how cordially, I join with you in the wish that they might prove introductory to a removal of all the differences depending between our two countries.

I have the honour to be, &c.

(Signed)

AUG. J. FOSTER.

Hon. James Monroe, &c.

Mr. Monroe to Mr. Foster.

DEPARTMENT OF STATE,

November 12, 1811.

SIR,

I have had the honour to receive your letter of the 1st of November, and to lay it before the president.

It is much to be regretted that the reparation due for such an aggression as that committed on the United States' frigate the Chesapeake, should have been so long delayed; nor could the translation of the offending officer from one command to another, be regarded as constituting a part of a reparation otherwise satisfactory: considering, however, the existing circumstances of the case, and the early and amicable attention paid to it by his royal highness the prince regent, the president accedes to the proposition contained in your letter; and in so doing, your government will, I am persuaded, see a proof of the conciliatory disposition by which the president has been actuated.

The officer commanding the Chesapeake, now lying in the harbour of Boston, will be instructed to receive the men who are to be restored to that ship.

I have the honour to be, &c.

(Signed) JAMES MONROE.

Augustus J. Foster, esq. &c.

DOCUMENTS

ACCOMPANYING

THE FIRST MESSAGE

OF THE

PRESIDENT OF THE UNITED STATES.

NOVEMBER 6, 1811.

CORRESPONDENCE

BETWEEN

Mr. Monroe, secretary of state, and Mr. Foster, envoy extraordinary and minister plenipotentiary of his Britannic Majesty, in relation to the Orders in Council.

Mr. Foster to Mr. Monroe.

WASHINGTON, July 2, 1811.

SIR,

I HAVE the honour to inform you, that I have received the special commands of his royal highness the prince regent, acting in the name and on the behalf of his majesty, to make an early communication to you of the sentiments which his royal highness was pleased, on the part of his majesty, to express to Mr. Pinkney, upon the occasion of his audience of leave.

His royal highness signified to Mr. Pinkney, the deep regret with which he learnt that Mr. Pinkney conceived himself to be bound by the instructions of his government to take his departure from England.

His royal highness informed Mr. Pinkney that one of the earliest acts of his government, in the name and on the behalf of his majesty, was to appoint an envoy extraordinary and minister plenipotentiary to the government of the United States; and added, that this appointment had been made in the spirit of amity, and with a view of maintaining the subsisting relations of friendship between the two countries.

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His royal highness farther declared to Mr. Pinkney, that he was most sincerely and anxiously desirous, on the part of his majesty, to cultivate a good understanding with the United States by every means consistent with the preservation of the maritime rights and interests of the British empire.

His royal highness particularly desired that Mr. Pinkney would communicate these declarations to the United States in the manner which might appear best calculated to satisfy the president of his royal highness' solicitude to facilitate an amicable discussion with the government of the United States upon every point of difference which had arisen between the two governments.

I have the honour to be, &c. &c. &c.

(Signed) AUG. J. FOSTER.

The honourable James Monroe, &c.

Mr. Foster to Mr. Monroe.

WASHINGTON, July 3, 1811.

SIR,

I have had the honour of stating to you verbally the system of defence to which his majesty has been compelled to resort for the purpose of protecting the maritime rights and interests of his dominions, against the new description of warfare that has been adopted by his enemies. I have presented to you the grounds upon which his majesty finds himself still obliged to continue that system, and I conceive that I shall best meet your wishes as expressed to me this morning, if, in a more formal shape, I should lay

before you the whole extent of the question as it appears to his majesty's government to exist between Great Britain and America.

I beg leave to call your attention, sir, to the principles on which his majesty's orders in council were originally founded. The decree of Berlin was directly and expressly an act of war, by which France prohibited all nations from trade or intercourse with Great-Britain, under peril of confiscation of their ships and merchandize; although France had not the means of imposing an actual blockade in any degree adequate to such a purpose. The immediate and professed object of this hostile decree was the destruction of all British commerce, through means entirely unsanctioned by the law of nations, and unauthorized by any received doctrine of legitimate blockade.

This violation of the established law of civilized nations in war would have justified Great-Britain in retaliating upon the enemy, by a similar interdiction of all commerce with France, and with such other countries as might co-operate with France in her system of commercial hostility against Great-Britain.

The object of Great-Britain was not, however, the destruction of trade, but its preservation under such regulations as might be compatible with her own security, at the same time that she extended an indulgence to foreign commerce, which strict principles would have entitled her to withhold. The retaliation of Great-Britain was not, therefore, urged to the full extent of her right; our prohibition of French trade was not absolute, but modified, and in return for the absolute prohibition of all trade with Great-Britain, we prohibited not all commerce with France, but all such commerce with France as should not be carried on through Great Britain.

It was evident that this system must prove prejudicial to neutral nations: this calamity was foreseen,

and deeply regretted. But the injury to the neutral nation arose from the aggression of France, which had compelled Great Britain in her own defence to resort to adequate retaliatory measures of war. The operation on the American commerce of those precautions which the conduct of France had rendered indispensable to our security, is therefore to be ascribed to the unwarrantable aggression of France, and not to those proceedings on the part of Great Britain which that aggression had rendered necessary and just.

The object of our system was merely to counteract an attempt to crush the British trade. Great Britain endeavoured to permit the continent to receive as large a portion of commerce as might be practicable through Great Britain; and all her subsequent regulations, and every modification of her system by new orders or modes of granting or withholding licences, have been calculated for the purpose of encouraging the trade of neutrals through Great Britain, whenever such encouragement might appear advantageous to the general interests of commerce, and consistent with the public safety of the nation.

The justification of his majesty's orders in council, and the continuance of that defence, have always been rested upon the existence of the decrees of Berlin and Milan, and on the perseverance of the enemy in the system of hostility which has subverted the rights of neutral commerce on the continent; and it has always been declared on the part of his majesty's government, that whenever France should have effectually repealed the decrees of Berlin and Milan, and should have restored neutral commerce to the condition in which it stood previously to the promulgation of those decrees, we should immediately repeal our orders in council.

France has asserted that the decree of Berlin was

a measure of just retaliation on her part, occasioned by our previous aggression; and the French government has insisted that our system of blockade, as it existed previously to the decree of Berlin, was a manifest violation of the received law of nations: we must, therefore, sir, refer to the articles of the Berlin decree to find the principles of our system of blockade which France considers to be new, and contrary to the law of nations.

By the 4th and 8th articles it is stated, as a justification of the French decree, that Great Britain "extends to unfortified towns and commercial ports, to harbours, and to the mouths of rivers, those rights of blockade which, by reason and the usage of nations, are applicable only to fortified places; and that the rights of blockade ought to be limited to fortresses really invested by a sufficient force."

It is added in the same articles, that Great Britain "has declared places to be in a state of blockade before which she has not a single ship of war, and even places which the whole British force would be insufficient to blockade, entire coasts and a whole empire."

Neither the practice of Great Britain nor the law of nations has ever sanctioned the rule now laid down by France, that no place, excepting fortresses in a complete state of investiture, can be deemed lawfully blockaded by sea.

If such a rule were to be admitted, it would become nearly impracticable for Great Britain to attempt the blockade of any port of the continent; and our submission to this perversion of the law of nations, while it would destroy one of the principal advantages of our naval superiority, would sacrifice the common rights and interests of all maritime states.

It was evident that the blockade of May, 1806, was the principal pretended justification of the decree of Berlin, though neither the principles on

which that blockade was founded, nor its practical operation, afforded any colour for the proceedings of France.

In point of date the blockade of May, 1806, preceded the Berlin decree; but it was a just and legal blockade according to the established law of nations, because it was intended to be maintained, and was actually maintained, by an adequate force appointed to guard the whole coast described in the notification, and consequently to enforce the blockade.

Great Britain has never attempted to dispute that in the ordinary course of the law of nations, no blockade can be justifiable or valid unless it be supported by an adequate force destined to maintain it, and to expose to hazard all vessels attempting to evade its operation. The blockade of May, 1806, was notified by Mr. Secretary Fox, on this clear principle; nor was that blockade announced until he had satisfied himself, by a communication with his majesty's board of admiralty, that the admiralty possessed the means and would employ them, of watching the whole coast from Brest to the Elbe, and of effectually enforcing the blockade.

The blockade of May, 1806, was therefore (according to the doctrine maintained by Great Britain,) just and lawful in its origin, because it was supported both in intention and fact by an adequate naval force. This was the justification of that blockade, until the period of time when the orders in council were issued.

The orders in council were founded on a distinct principle; that of defensive retaliation. France had declared a blockade of all the ports and coasts of Great Britain, and her dependencies, without assigning, or being able to assign any force to support that blockade. Such an act of the enemy would have justified a declaration of the blockade of the whole coast of France, even without the application of any

particular force to that service. Since the promulgation of the orders in council, the blockade of May, 1806, has been sustained and extended, by the more comprehensive system of defensive retaliation, on which those regulations are founded. But if the orders in council should be abrogated, the blockade of May, 1806, could not continue under our construction of the law of nations, unless that blockade should be maintained by a due application of an adequate naval force.

America appears to concur with France, in asserting that Great Britain was the original aggressor in the attack on neutral rights, and has particularly objected to the blockade of May, 1806, as an obvious instance of that aggression on the part of Great Britain.

Although the doctrines of the Berlin decree, respecting the rights of blockade, are not directly asserted by the American government, Mr. Pinkney's correspondence would appear to countenance the principles on which those doctrines are founded. The objection directly stated by America against the blockade of May, 1806, rests on a supposition that no naval force which Great Britain possessed, or could have employed for such a purpose, could have rendered that blockade effectual, and that therefore it was necessarily irregular, and could not possibly be maintained in conformity to the law of nations.

Reviewing the course of this statement, it will appear, that the blockade of May, 1806, cannot be deemed contrary to the law of nations, either under the objections urged by the French, or under those declared, or insinuated by the American government, because that blockade was maintained by a sufficient naval force; that the decree of Berlin was not, therefore, justified either under the prettexts alleged by France, or under those supported by America; that the orders in council were founded on a just princi-

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ple of defensive retaliation, against the violation of the law of nations, committed by France in the decree of Berlin; that the blockade of May, 1806, is now included in the more extensive operation of the orders in council; and lastly, that the orders in council will not be continued beyond the effectual duration of the hostile decrees of France, nor will the blockade of May, 1806, continue after the repeal of the orders in council, unless his majesty's government shall think fit to sustain it by the special application of a sufficient naval force. This fact will not be suffered to remain in doubt; and if the repeal of the orders in council should take place, the intention of his majesty's government respecting the blockade of May, 1806, will be notified at the same time.

I need not recapitulate to you the sentiments of his majesty's government, so often repeated on the subject of the French minister's note to general Armstrong, dated the 5th of last August. The studied ambiguity of that note has since been amply explained by the conduct and language of the government of France, of which one of the most remarkable instances is to be found in the speech of the chief of the French government on the 17th of last month, to certain deputies from the free cities of Hamburg, Bremen, and Lubeck, wherein he declares that the Berlin and Milan decrees shall be the public code of France as long as England maintains her orders in council of 1806 and 1807. Thus pronouncing as plainly as language will admit, that the system of violence and injustice, of which he is the founder, will be maintained by him until the defensive measures of retaliation to which they gave rise, on the part of Great Britain, shall be abandoned.

If other proofs were necessary to shew the continued existence of those obnoxious decrees, they may be discovered in the imperial edict dated at

Fontainebleau in October 19, 1810, that monstrous production of violence, in which they are made the basis of a system of general and unexampled tyranny and oppression over all countries subject to, allied with, or within reach of the power of France; in the report of the French minister for foreign affairs dated last December; and in the letter of the French minister of justice to the president of the council of prizes. To this latter, sir, I would wish particularly to invite your attention; the date is the 25th of December; the authority it comes from most unquestionable; and you will there find, sir, the duke of Massa, in giving his instructions to the council of prizes, in consequence of the president of the United States' proclamation of November 3d, most cautiously avoiding to assert that the French decrees were repealed, and ascribing not to such repeal, but to the ambiguous passage which he quotes at length from Mr. Champagny's letter of August 5th, the new attitude taken by America; and you will also find an evidence in the same letter of the continued capture of American ships after November 1st, and under the Berlin and Milan decrees, having been contemplated by the French government; since there is a special direction given for judgment on such ships being suspended in consequence of the American proclamation, and for their being kept as pledges for its enforcement.

Can then, sir, those decrees be said to have been repealed at the period when the proclamation of the president of the United States appeared, or when America enforced her non-importation act against Great Britain? Are they so at this moment? To the first question the state papers which I have referred to, appear to give a sufficient answer: for even supposing that the repeal had since taken place, it is clear that on November 3d, there was no question as to that not being then the case; the capture of the

ship *New Orleans Packet* seized at Bordeaux, and of the *Grace Ann Green*, seized at or carried into Marseilles, being cases arising under the French decrees of Berlin and Milan, as is very evident. Great Britain might, therefore, complain of being treated with injustice by America, even supposing that the conduct of France had since been unequivocal.

America contends that the French decrees are revoked as it respects her ships upon the high seas, and you, sir, inform me that the only two American ships taken under their maritime operation, as you are pleased to term it, since November 1st, have been restored; but may not they have been restored in consequence of the satisfaction felt in France at the passing of the non-importation act in the American Congress, an event so little to be expected; for otherwise, why, having been captured in direct contradiction to the supposed revocation, why were they not restored immediately?

The fears of the French navy, however, prevent many cases of the kind occurring on the ocean under the decrees of Berlin and Milan; but the most obnoxious and destructive parts of those decrees are exercised with full violence, not only in the ports of France, but in those of all other countries to which France thinks she can commit injustice with impunity.

Great Britain has a right to complain that neutral nations should overlook the very worst features of those extraordinary acts, and should suffer their trade to be made a medium of an unprecedented, violent, and monstrous system of attack upon her resources; a species of warfare unattempted by any civilized nation before the present period. Not only has America suffered her trade to be moulded into the means of annoyance to Great Britain under the provisions of the French decrees, but construing those decrees as extinct upon a deceitful declaration of the French

cabinet, she has enforced her non-importation act against Great Britain.

Under these circumstances I am instructed by my government to urge to that of the United States, the injustice of thus enforcing that act against his majesty's dominions; and I cannot but hope that a spirit of justice will induce the United States' government to re-consider the line of conduct they have pursued, and at least to re-establish their former state of strict neutrality.

I have only to add, sir, that on my part, I shall ever be ready to meet you on any opening which may seem to afford a prospect of restoring complete harmony between the two countries, and that it will, at all times, give me the greatest satisfaction to treat with you on the important concerns so interesting to both.

I have the honour to be, &c.

(Signed)

AUG. J. FOSTER.

To the honourable

James Monroe, &c.

Mr. Monroe to Mr. Foster.

DEPARTMENT OF STATE,

July 6, 1811.

SIR,

I have had the honour to receive your letter of the 2d instant, in which you express the regret of his royal highness the prince regent, at the departure of the American minister from Great Britain, and state that it was one of the first acts of his government to

appoint an envoy extraordinary and minister plenipotentiary to the government of the United States, with a view of maintaining the subsisting relations of friendship between the two countries, and that he was solicitous to facilitate an amicable discussion with the government of the United States upon every point of difference which had arisen between the two governments.

I am instructed by the president, to acknowledge to you the great satisfaction which he has derived from the communication which you have made of the disposition of his royal highness the prince regent, to cultivate friendship with the United States, and to assure you that the prompt and friendly measure which he adopted by the appointment of an envoy extraordinary and minister plenipotentiary to this country to maintain the relations of friendship and facilitate an amicable discussion on every point of difference that had arisen between the two governments, is considered as a favourable and interesting proof of that disposition.

I am also instructed by the president to state his ready disposition to meet, in a similar spirit, these frank and friendly assurances of the prince regent, and that nothing will be wanting on his part, consistent with the rights of the United States, that may be necessary to promote the re-establishment, in all respects, of that good understanding between the two countries, which he considers to be highly important to the interests of both.

Permit me to add, sir, that if, as the organ of my government, I can be in any degree instrumental, in concert with you, in promoting such a result, I shall derive from it a very great and sincere satisfaction.

I have the honour to be, &c.

(Signed) JAS. MONROE.

Augustus J. Foster, esq. &c. &c. &c.

Mr. Foster to Mr. Monroe.

WASHINGTON, July 7, 1811.

SIR,

I beg leave to acknowledge the receipt of your letter dated yesterday, in answer to mine of the 2d instant, and to assure you that it gives me very sincere pleasure to have to transmit, for the purpose of being laid before his royal highness the prince regent, acting in the name and on the behalf of his majesty, so satisfactory a testimony of the amicable manner in which the president of the United States has received the instances and assurances of a friendly disposition on the part of his royal highness towards the United States, which, by command of his royal highness, I had the honour to communicate to the president through you.

The assurances which you have added, sir, of the gratification that you would yourself derive, if, as the organ of your government, you could be instrumental towards re-establishing a good understanding between both our countries, are too congenial with my own feelings on the subject, not to be received with very high satisfaction.

I have the honour to be,

With the highest consideration and respect,

Sir,

Your most obedient humble servant,

(Signed) AUG. J. FOSTER.

To the honourable James Monroe,
Secretary of State.

Mr. Foster to Mr. Monroe.

WASHINGTON, July 14, 1811.

SIR,

In consequence of our conversation of yesterday, and the observations which you made respecting that part of my letter to you of the 3d instant, wherein I have alluded to the principle on which his majesty's orders in council were originally founded, I think it right to explain myself, in order to prevent any possible mistake, as to the present situation of neutral trade with his majesty's enemies.

It will only be necessary for me to repeat what has already long since been announced to the American government, namely, that his majesty's order in council of April 26, 1809, superseded those of November, 1807, and relieved the system of retaliation, adopted by his majesty against his enemies, from what was considered in this country as the most objectionable part of it—the option given to neutrals to trade with the enemies of Great Britain through British ports on payment of a transit duty.

This explanation, sir, will, I trust, be sufficient to do away any impression that you may have received to the contrary, from my observations respecting the effects which his majesty's orders in council originally had on the trade of neutral nations. Those observations were merely meant as preliminary to a consideration of the question now at issue between the two countries.

I have the honour to be, &c. &c. &c.

(Signed) AUGS. J. FOSTER.

The honourable James Monroe, &c. &c. &c.

Mr. Foster to Mr. Monroe.

WASHINGTON, July 14, 1811.

SIR,

His majesty's packet-boat having been so long detained, and a fortnight having elapsed since my arrival at this capital, his royal highness the prince regent will necessarily expect that I should have to transmit to his royal highness some official communication as to the line of conduct the American government mean to pursue. I trust you will excuse me, therefore, sir, if without pressing for a detailed answer to my note of the 3d instant, I anxiously desire to know from you what is the president's determination with respect to suspending the operation of the late act of congress prohibiting all importation from the British dominions.

There have been repeated avowals lately made by the government of France, that the decrees of Berlin and Milan were still in full force, and the acts of that government have corresponded with those avowals.

The measures of retaliation pursued by Great Britain against those decrees, are consequently, to the great regret of his royal highness, still necessarily continued.

I have had the honour to state to you the light in which his royal highness the prince regent viewed the proclamation of the president of last November, and the surprise with which he learnt the subsequent measures of congress against the British trade.

American ships seized under his majesty's orders in council, even after that proclamation appeared, were not immediately condemned, because it was believed that the insidious professions of France might have led the American government and the merchants

of America into an erroneous construction of the intentions of France.

But when the veil was thrown aside, and the French ruler himself avowed the continued existence of his invariable system, it was not expected by his royal highness that America would have refused to retrace the steps she had taken.

Fresh proofs have since occurred of the resolution of the French government to cast away all consideration of the rights of nations, in the unprecedented warfare they have adopted.

America however still persists in her injurious measures against the commerce of Great Britain, and his royal highness has, in consequence, been obliged to look to means of retaliation against those measures, which his royal highness cannot but consider as most unjustifiable.

How desirable would it not be, sir, if a stop could be put to any material progress in such a system of retaliation, which, from step to step, may lead to the most unfriendly situation between the two countries?

His majesty's government will necessarily be guided in a great degree by the contents of my first dispatches, as to the conduct they must adopt towards America.

Allow me, then, sir, to repeat my request to learn from you whether I may not convey to his royal highness, what I know would be most grateful to his royal highness's feelings, namely, the hope that he may be enabled, by the speedy return of America from her unfriendly attitude towards Great-Britain, to forget altogether that he ever was obliged to have any other object in view besides that of endeavouring to promote the best understanding possible between the two countries.

I have the honour to be, &c.

(Signed)

AUG. J. FOSTER.

The honourable James Monroe, &c. &c. &c.

Mr. Monroe to Mr. Foster.

DEPARTMENT OF STATE,

July 15, 1811.

SIR,

The reasoning and scope of the two letters I have had the honour to receive from you, dated on the 3d and 14th instant, rest essentially on a denial that the French decrees of Berlin and Milan are repealed. These decrees comprise regulations essentially different in their principles; some of them violating the neutral rights of the United States, others operating against Great Britain without any such violation.

In order to understand distinctly and fully the tenor of your communications, you will pardon the request I have the honour to make of an explanation of the precise extent in which a repeal of the French decrees is made a condition of the repeal of the British orders; and particularly whether the condition embraces the seizure of vessels and merchandize entering French ports in contravention of 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.

I have the honour to be, &c.

(Signed)

JAS. MONROE.

The honourable Augustus J. Foster,
&c. &c. &c.

Mr. Foster to Mr. Monroe.

WASHINGTON, July 16, 1811.

SIR,

I had the honour 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 instant, 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 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 comprise regulations essentially different in their principles; some of them violating the neutral rights of the United States, others operating against Great 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 into 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 declaration alluded to, you will find, sir, express avowals that the principles on which they were founded, and the provisions contained in them, are wholly new, unprecedented, and in direct contradiction 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 those

decrees, was a regulation which France had ever been in the previous practice of.

They were consequently to be considered, and were indeed allowed by France herself to be, all of them, parts of a new system of warfare, unauthorized 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, authorized 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 through 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 honour 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 inquiries will be considered by you sufficiently satisfactory: should you require any further, and 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, while he adds to, and aggravates his system of violence against neutral trade, he endeavours 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.

I have the honour to be, &c.

(Signed) AUG. J. FOSTER.

The honourable James Monroe, &c.

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 honour 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 comprised 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 alleged.

But waiving 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 a 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 effect falls

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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 United 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 Great 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 favourable 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, Great Britain cannot trade with France. Nor does France permit a neutral to come into her ports from Great Britain. The attempt of Great Britain to force our trade through her ports, would have, therefore, the commercial effect of depriving the United 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 calamities of war, is a change as novel and 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 the 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 endeavoured 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 state 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 and non-intercourse were pacific 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 engagement, 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 United States, which fact the President should declare by proclamation, and 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 United States and Great 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 United States and the British dominions that France had violated the neutral rights of the United States by her blockading edicts. It was in the trade with France and her allies that Great Britain had committed similar violations by similar edicts. It was the revocation of those edicts, so far as they committed such violations,

which the United States had in view, when they passed the law of May 1, 1810.

On the 5th August, 1810, the French minister of foreign affairs addressed a note to the minister plenipotentiary of the United 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 principle of blockade, or that the United States would cause their rights to be respected, conformably to the act of May 1, 1810.

This measure of the French government was founded on the law of May 1, 1810, as is expressly declared in the letter of the duke of Cadore, announcing it. The edicts of Great-Britain, the revocation of which was expected by France, were those alluded to in that act; and the means by which the United States should cause their rights to be respected in case Great-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 Great 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 November, 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 1, 1810, should cease and be discontinued in relation to France and her dependencies. It was a necessary consequence of this proclamation also, that if Great Britain did not revoke her edicts, the non-importation would operate against her at the end of three months. This actually took place. She de-

clined the revocation, and on the 2d February last, that law took effect. In confirmation of the proclamation, an act of congress was passed on the 2d March following.

Great 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 United 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 Great Britain a similar revocation.

The revocation announced officially by the French minister of foreign affairs to the minister plenipotentiary of the United States at Paris, on the 5th August, 1810, was in itself sufficient to justify the claim of the United States to a correspondent measure from Great 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 Great 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 United 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 mutual confidence exists, and must be 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 which binds nations together in all their relations, in war as well as in peace, is broken.

What would Great-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 favourable opportunity presented to her, to withdraw from that measure with honour, be the conduct of France afterwards what it might. Had Great 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 Great Britain 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 United 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 con-

demned by French tribunals, on the principle of those decrees, since the 1st 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 New-Orleans Packet as consisted of the produce of the United States. 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 Great 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 United 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 Lubeck; the imperial edict dated at Fontainebleau, on the 19th of October, 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 favour of those nations in whose favour Great Britain revokes hers, or who support their rights against her pretension, as France admits the United 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 August 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 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 United States having fulfilled their engagement, the captures should be declared void, and 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 United States. By instructing the French tribunal to make no decision until the 2d 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 United States may justly

complain of delay in the restitution of that property, but that is an injury which affects them only. Great Britain has no right to complain of it. She was interested only in the revocation of the decrees by which neutral rights would be secured from future violation; or if she had been interested in the delay, it would have afforded no pretext for more than a delay in repealing her orders till the 2d February. From that day, at farthest, the French decrees would cease. At the same day ought her orders to have ceased. I might add to this statement, that every communication received from the French government, either through our representative there, or its representative here, are in accord with the actual repeal of the Berlin and Milan decrees, in relation to the neutral commerce of the United States. But it will suffice to remark, that the best and only adequate evidence of their ceasing to operate, is the defect of evidence that they do operate. It is a case where the want of proof against the fulfilment of a pledge, is proof of the fulfilment. Every case occurring, to which, if the decrees were in force, they would be applied, and to which they are not applied, is a proof that they are not in force. And if these proofs have not been more multiplied, I need not remind you, that a cause is to be found in the numerous captures under your orders in council, which continue to evince the rigour with which they are enforced, after a failure of the basis on which they were supposed to rest.

But Great Britain contends, as appears by your last letter, that she ought not to revoke her orders in council, until the commerce of the continent is restored to the state on which it stood before the Berlin and Milan decrees issued; until the French decrees are repealed, not only as to the United States, but so as to permit Great Britain to trade with the continent. Is it then meant that Great Britain should be allowed to trade with all the powers with whom

she traded at that epoch? Since that time France has extended her conquests to the north, and raised enemies against Great Britain, where she then had friends. Is it proposed to trade with them, notwithstanding the change in their situation? Between the enemies of one date and those of another, no discrimination can be made. There is none in reason, nor can there be any of right, in practice. Or do you maintain the general principle, and contend that Great Britain ought to trade with France and her allies? Between enemies there can be no commerce. The vessels of either taken by the other are liable to confiscation, and are always confiscated. The number of enemies or extent of country which they occupy, cannot affect the question. The laws of war govern the relation which subsists between them, which, especially in the circumstance under consideration, are invariable. They were the same in times the most remote that they now are. Even if peace had taken place between Great Britain and the powers of the continent, she could not trade with them without their consent. Or does Great Britain contend, that the United States, as a neutral power, ought to open the continent to her commerce, on such terms as she may designate? On what principle can she set up such a claim? No example of it can be found in the history of past wars, nor is it founded in any recognized principle of war, or in any semblance of reason or right. The United States could not maintain such a claim in their own favour, though neutral. When advanced in favour of an enemy, it would be the most preposterous and extravagant claim ever heard of. Every power, where not restrained by treaty, has a right to regulate its trade with other nations, in such manner as it finds most consistent with its interest; to admit, and on its own conditions, or to prohibit the importation of such articles as are necessary to supply the wants, or encourage the industry of its people.

In what light would Great Britain view an application from the United States, for the repeal of right, of any act of her parliament, which prohibited the importation of any article from the United States, such as their fish or their oil? or which claimed the diminution of the duty on any other, such as their tobacco, on which so great a revenue is raised? In what light would she view a similar application, made at the instance of France, for the importation into England, of any article the growth or manufacture of that power, which it was the policy of the British government to prohibit?

If delays have taken place in the restitution of American property, and in placing the American commerce in the ports of France on a fair and satisfactory basis, they involve questions, as has already been observed, in which the United States alone are interested. As they do not violate the revocation by France, of her edicts, they cannot impair the obligation of Great Britain to revoke hers, nor change the epoch at which the revocation ought to have taken place. Had that duly followed, it is more than probable that those circumstances, irrelative as they are, which have excited doubt in the British government, of the practical revocation of the French decrees, might not have occurred.

Every view which can be taken of this subject, increases the painful surprise at the innovations on all the principles and usages heretofore observed, which are so unreservedly contended for in your letters of the 3d and 16th instant, and which, if persisted in by your government, present such an obstacle to the wishes of the United States, for a removal of the difficulties which have been connected with the orders in council. It is the interest of belligerents to mitigate the calamities of war; and neutral powers possess ample means to promote that object, provided they sustain with impartiality and firmness the dignity

of their station. If belligerents expect advantage from neutrals, they should leave them in the full enjoyment of their rights. The present war has been oppressive beyond example, by its duration, and by the desolation which it has spread throughout Europe. It is highly important that it should assume, at least, a milder character. By the revocation of the French edicts, so far as they respected the neutral commerce of the United States, some advance is made towards that most desirable and consoling result. Let Great Britain follow the example. The ground thus gained will soon be enlarged by the concurring and pressing interests of all parties, and whatever is gained will accrue to the advantage of afflicted humanity.

I proceed to notice another part of your letter of the 3d instant, which is reviewed in a more favourable light. The president has received with great satisfaction the communication, that should the orders in council of 1807 be revoked, the blockade of May of the preceding year would cease with them, and that any blockade which should be afterwards instituted, should be duly notified and maintained by an adequate force. This frank and explicit declaration, worthy of the prompt and amicable measure adopted by the prince regent in coming into power, seems to remove a material obstacle to an accommodation of differences between our countries, and when followed by the revocation of the orders in council, will, as I am authorized to inform you, produce an immediate termination of the non-importation law, by an exercise of the power vested in the president for that purpose.

I conclude with remarking, that if I have confined this letter to the subjects brought into view by yours, it is not because the United States have lost sight, in any degree, of the other very serious causes of complaint, on which they have received no satisfaction, but because the conciliatory policy of this government has

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thus far separated the case of the orders in council from others, and because, with respect to these others, your communication has not afforded any reasonable prospect of resuming them, at this time, with success. It is presumed that the same liberal view of the true interests of Great Britain, and friendly disposition towards the United States, which induced the prince regent to remove so material a difficulty as had arisen in relation to a repeal of the orders in council, will lead to a more favourable further consideration of the remaining difficulties on that subject, and that the advantages of an amicable adjustment of every question depending between the two countries, will be seen by your government in the same light as they are by that of the United States.

I have the honour to be, &c. &c.

(Signed) JAMES MONROE.

Augustus J. Foster, esquire, &c.

Mr. Foster to Mr. Monroe.

WASHINGTON, July 24, 1811.

SIR,

Having been unable to ascertain distinctly from your letter to me of yesterday's date, whether it was the determination of the president to rest satisfied with the partial repeal of the Berlin and Milan decrees, which you believe has taken place, so as to see no reason in the conduct of France for altering

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the relations between this country and Great Britain, by exercising his power of suspending the operation of the non-importation act; allow me to repeat my question to you on this point, as contained in my letter of the 14th instant, before I proceed to make any comments on your answer.

I have the honour to be,

With distinguished consideration,

Sir,

Your most obedient humble servant,

(Signed) AUG. J. FOSTER.

The honourable James Monroe,
Secretary of State.

Mr. Monroe to Mr. Foster.

DEPARTMENT OF STATE,

July 26, 1811.

SIR,

I had the honour to receive your letter of yesterday's date, in time to submit it to the view of the president before he left town.

It was my object to state to you in my letter of the 23d instant, that under existing circumstances, it was impossible for the president to terminate the operation of the non-importation law of the 2d March last:

that France having accepted the proposition made by a previous law equally to Great Britain and to France, and having revoked her decrees violating our neutral rights, and Great Britain having declined to revoke hers, it became the duty of this government to fulfil its engagement, and to declare the non-importation law in force against Great Britain.

This state of affairs has not been sought by the United States. When the proposition contained in the law of May 1st, 1810, was offered equally to both powers, there was cause to presume that Great Britain would have accepted it, in which event the non-importation law would not have operated against her.

It is in the power of the British government, at this time, to enable the president to set the non-importation law aside, by rendering to the United States an act of justice. If Great Britain will cease to violate their neutral rights by revoking her orders in council, on which event alone the president has the power, I am instructed to inform you, that he will, without delay, exercise it by terminating the operation of this law.

It is presumed that the communications which I have had the honour to make to you, of the revocation by France of her decrees, so far as they violated the neutral rights of the United States, and of her conduct since the revocation, will present to your government a different view of the subject from that which it had before taken, and produce in its councils a corresponding effect.

I have the honour to be, &c.

(Signed)

JAS. MONROE.

Aug. J. Foster, esq. &c.

Mr. Foster to Mr. Monroe.

WASHINGTON, July 26, 1811.

SIR,

I have had the honour to receive your letter of July 23d, in answer to mine of the 3d and 14th instant, which, give me leave to say, were not merely relative to his majesty's orders in council, and the blockade of May, 1806, but also to the president's proclamation of last November, and to the subsequent act of congress of March 2d, as well as to the just complaints which his royal highness the prince regent had commanded me to make to your government with respect to the proclamation and to that act.

If the United States' government had expected that I should have made communications which would have enabled them to come to an accommodation with Great Britain, on the ground on which alone you say it was possible to meet us, and that you mean by that expression a departure from our system of defence against the new kind of warfare still practised by France; I am at a loss to discover from what source they could have derived those expectations, certainly not from the correspondence between the marquis Wellesley and Mr. Pinkney.

Before I proceed to reply to the arguments which are brought forward by you to shew that the decrees of Berlin and Milan are repealed, I must first enter into an explanation upon some points on which you have evidently misapprehended, for I will not suppose you could have wished to misinterpret my meaning.

And first, in regard to the blockade of May, 1806, I must aver that I am wholly at a loss to find out from what part of my letter it is that the president

has drawn the *unqualified* inference, that should the orders in council of 1807 be revoked, the blockade of May 1806 would cease with them. It is most material that on this point no mistake should exist between us. From your letter it would appear as if, on the question of blockade which America had so unexpectedly connected with her demand for a repeal of our orders in council, Great Britain had made the concession required of her; as if, after all that has passed on the subject, after the astonishment and regret of his majesty's government at the United States having taken up the view which the French government presented, of our just and legitimate principles of blockade which are exemplified in the blockade of May, 1806, the whole ground taken by his majesty's government was at once abandoned. When I had the honour to exhibit to you my instructions, and to draw up, as I conceived according to your wishes, and those of the president, a statement of the mode in which that blockade would probably disappear, I never meant to authorize such a conclusion, and I now beg most unequivocally to disclaim it. The blockade of May, 1806, will not continue after the repeal of the orders in council, unless his majesty's government shall think fit to sustain it by the special application of a sufficient naval force, and the fact of its being so continued or not, will be notified at the time. If in this view of the matter, which is certainly presented in a conciliatory spirit, one of the obstacles to a complete understanding between our countries can be removed by the United States' government waiving all further reference to that blockade, when they can be justified in asking a repeal of the orders, and I may communicate this to my government, it will, undoubtedly, be very satisfactory: but I beg distinctly to disavow having made any acknowledgment that the blockade would cease merely in consequence of a revoca-

tion of the orders in council. Whenever it does cease, it will cease because there will be no adequate force applied to maintain it.

On another very material point, sir, you appear to have misconstrued my words; for in no one passage of my letter can I discover any mention of innovations on the part of Great Britain, such as you say excited a painful surprise in your government. There is no new pretension set up by his majesty's government. In answer to questions of yours as to what were the decrees or regulations of France which Great Britain complained of, and against which she directs her retaliatory measures, I brought distinctly into your view the Berlin and Milan decrees; and you have not denied, because indeed you could not, that the provisions of those decrees were new measures of war on the part of France, acknowledged as such by her ruler, and contrary to the principles and usages of civilized nations. That the present war has been oppressive beyond example by its duration, and the desolation it spreads through Europe, I willingly agree with you; but the United States cannot surely mean to attribute the cause to Great Britain. The question between Great Britain and France is that of an honourable struggle against the lawless efforts of an ambitious tyrant, and America can but have the wish of every independent nation as to its result.

On a third point, sir, I have also to regret that my meaning should have been mistaken. Great Britain never contended, that British merchant vessels should be allowed to trade with her enemies, or that British property should be allowed entry into their ports, as you would infer; such a pretension would indeed be preposterous: but Great Britain does contend against the system of terror put in practice by France, by which, usurping authority wherever her arms or the timidity of nations will enable her to extend her

influence, she makes it a crime to neutral countries as well as individuals that they should possess articles, however acquired, which may have been once the produce of English industry or of the British soil. Against such an abominable and extravagant pretension, every feeling must revolt; and the honour, no less than the interest, of Great Britain engages her to oppose it.

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Turning to the course of argument contained in your letter, allow me to express my surprise at the conclusion you draw in considering the question of priority, relative to the French decrees or British orders in council. It was clearly proved that the blockade of May, 1806, was maintained by an adequate naval force, and therefore was a blockade founded on just and legitimate principles; and I have not heard that it was considered in a contrary light, when notified as such to you by Mr. Secretary Fox, nor until it suited the views of France to endeavour to have it considered otherwise. Why America took up the view the French government chose to give of it, and could see in it grounds for the French decrees, was always matter of astonishment in England.

Your remarks on the modifications at various times of our system of retaliation will require the less reply, from the circumstance of the order in council of April, 1809, having superseded them all. They were calculated for the avowed purpose of softening the effect of the original orders on neutral commerce, the incidental effect of those orders on neutrals having been always sincerely regretted by his majesty's government; but when it was found that neutrals objected to them, they were removed.

As to the principle of retaliation, it is founded on the just and natural right of self-defence against our enemy; if France is unable to enforce her decrees on the ocean, it is not from the want of will, for she

enforces them wherever she can do it; her threats are only empty where her power is of no avail.

In the view you have taken of the conduct of America, in her relations with the two belligerents, and in the conclusion you draw with respect to the impartiality of your country, as exemplified in the non-importation law, I lament to say I cannot agree with you. That act is a direct measure against the British trade, enacted at a time when all the legal authorities in the United States appeared ready to contest the statement of a repeal of the French decrees, on which was founded the president's proclamation of November 2d, and consequently to dispute the justice of the proclamation itself.

You urge, sir, that the British government promised to proceed *pari passu* with France in the repeal of her edicts. It is to be wished you could point out to us any step France has taken in the repeal of hers. Great Britain has repeatedly declared that she would repeal when the French did so, and she means to keep to that declaration.

I have stated to you, that we could not consider the letter of August 5, declaring the repeal of the French edicts, provided we revoked our orders in council, or America resented our not doing so, as a step of that nature; and the French government knew that we could not; their object was, evidently, while their system was adhered to in all its rigour, to endeavour to persuade the American government that they had relaxed from it, and to induce her to proceed in enforcing the submission of Great Britain to the inordinate demands of France. It is to be lamented that they have but too well succeeded; for the United States' government appear to have considered the French declaration in the sense in which France wished it to be taken, as an absolute repeal of her decrees, without adverting to the conditional terms which accompanied it.

But you assert that no violations of your neutral rights by France occur on the high seas, and that these were all the violations alluded to in the act of Congress of May, 1810. I readily believe, indeed, that such cases are rare, but it is owing to the preponderance of the British navy that they are so. When scarce a ship under the French flag can venture to sea without being taken, it is not extraordinary that they make no captures. If such violations alone were within the purview of your law, there would seem to have been no necessity for its enactment. The British navy might have been safely trusted for the prevention of their occurrence. But I have always believed, and my government has believed, that the American legislators had in view, in the provisions of their law, as it respects France, not only her deeds of violence on the seas, but all the novel and extraordinary pretensions and practices of her government which infringed their neutral rights.

We have had no evidence, as yet, of any of those pretensions being abandoned. To the ambiguous declaration in Mr. Champagny's note, is opposed the unambiguous and personal declaration of Bonaparte himself. You urge that there is nothing incompatible with the revocation of the decrees, in respect to the United States, in his expressions to the deputies from the free cities of Hamburg, Bremen, and Lubeck; that it is distinctly stated in that speech *that the blockade of the British Islands shall cease when the British blockades cease*, and that the French blockade shall cease in favour of those nations in whose favour Great Britain revokes hers, or who support their rights against her pretension.

It is to be inferred from this and the corresponding parts of the declaration alluded to, that unless Great Britain sacrifices her principles of blockade, which are those authorized by the established law of nations, France will still maintain her decrees of Berlin

and Milan, which indeed the speech in question declares to be the fundamental laws of the French empire.

I do not, I confess, conceive how these avowals of the ruler of France can be said to be compatible with the repeal of his decrees in respect to the United States. If the United States are prepared to insist on the sacrifice by Great Britain of the ancient and established rules of maritime war practised by her, then, indeed, they may avoid the operation of the French decrees; but otherwise, according to this document, it is very clear that they are still subjected to them.

The decree of Fontainebleau is confessedly founded on the decrees of Berlin and Milan, dated the 19th October, 1810, and proves their continued existence. The report of the French minister of December 8, announcing the perseverance of France in her decrees, is still further in confirmation of them, and a re-peculiar of the letter of the minister of justice of the 25th last December, confirms me in the inference I drew from it; for, otherwise, why should that minister make the prospective restoration of American vessels taken after the 1st November, to be a consequence of the non-importation and not of the French revocation? If the French government had been sincere, they would have ceased infringing on the neutral rights of America after the first November: that they violated them, however, after that period, is notorious.

Your government seem to let it be understood that an ambiguous declaration from Great Britain, similar to that of the French minister, would have been acceptable to them. But, sir, is it consistent with the dignity of a nation that respects itself to speak in ambiguous language? The subjects and citizens of either country would, in the end, be the victims; as many are already, in all probability, who from a misconstruction of the meaning of the French government, have been led into the most imprudent speculations.

Such conduct would not be to proceed *pari passu* with France in revoking our edicts, but to descend to the use of the perfidious and juggling contrivances of her cabinet, by which she fills her coffers at the expense of independent nations. A similar construction of proceeding *pari passu* might lead to such decrees as those of Rambouillet or of Bayonne, to the system of exclusion or of licences; all measures of France against the American commerce, in nothing short of absolute hostility.

It is urged that no vessel has been condemned by the tribunals of France on the principles of her decrees since the 1st November. You allow, however, that there have been some detained since that period, and that such part of the cargoes as consisted of goods not the produce of America was seized, and the other part, together with the vessel itself, only released after the president's proclamation became known in France. These circumstances surely only prove the difficulty that France is under in reconciling her anti-commercial and anti-neutral system with her desire to express her satisfaction at the measures taken in America against the commerce of Great Britain. She seizes in virtue of the Berlin and Milan decrees, but she makes a partial restoration for the purpose of deceiving America.

I have now followed you, I believe, sir, through the whole range of your argument, and on reviewing the course of it I think I may securely say, that no satisfactory proof has as yet been brought forward of the repeal of the obnoxious decrees of France, but on the contrary that it appears they continue in full force, consequently that no grounds exist on which you can with justice demand of Great Britain a revocation of her orders in council; that we have a right to complain of the conduct of the American government in enforcing the provisions of the act of May, 1810, to the exclusion of the British trade, and afterwards in

obtaining a special law for the same purpose, though it was notorious at the time that France still continued her aggressions upon American commerce, and had recently promulgated anew her decrees, suffering no trade from this country but through licences publicly sold by her agents; and that all the suppositions you have formed of innovations on the part of Great Britain, or of her pretensions to trade with her enemies, are wholly groundless. I have also stated to you the view his majesty's government has taken of the question of the blockade of May, 1806, and it now only remains that I urge afresh the injustice of the United States' government persevering in their union with the French system, for the purpose of crushing the commerce of Great Britain.

From every consideration which equity, good policy, or interest can suggest, there appears to be such a call upon America to give up this system, which favours France to the injury of Great Britain, that I cannot, however little satisfactory your communications, as yet abandon all hopes that even before the congress meet, a new view may be taken of the subject by the president, which will lead to a more happy result.

I have the honour to be, &c.

(Signed)

AUG. J. FOSTER.

The honourable James Monroe, &c.

Mr. Monroe to Mr. Foster.

DEPARTMENT OF STATE,

October 1, 1811.

SIR,

I have had the honour to receive your letter of the 26th of July, and to submit it to the view of the president.

In answering that letter, it is proper that I should notice a complaint that I had omitted to reply, in mine of the 23d of July, to your remonstrance against the proclamation of the president of November last, and to the demand which you had made, by the order of your government, of the repeal of the non-importation act of March 2d, of the present year.

My letter has certainly not merited this imputation.

Having shewn the injustice of the British government in issuing the orders in council on the pretext assigned, and its still greater injustice in adhering to them after that pretext had failed, a respect for Great Britain, as well as for the United States, prevented my placing in the strong light in which the subject naturally presented itself, the remonstrance alluded to, and the extraordinary demand founded on it, that while your government accommodated in nothing, the United States should relinquish the ground, which, by a just regard to the public rights and honour, they had been compelled to take. Propositions tending to degrade a nation can never be brought into discussion by a government not prepared to submit to the degradation. It was for this reason that I confined my reply to those passages in your letter, which involved the claim of the United States, on the principles of justice, to the revocation of the orders in council. Your de-

mand, however, was neither unnoticed nor unanswered. In laying before you the complete, and as was believed, irresistible proof on which the United States expected, and called for the revocation of the orders in council, a very explicit answer was supposed to be given to that demand.

Equally unfounded is your complaint, that I misunderstood that passage which claimed, as a condition of the revocation of the orders in council, that the trade of Great Britain with the continent should be restored to the state in which it was before the Berlin and Milan decrees were issued. As this pretension was novel and extraordinary, it was necessary that a distinct idea should be formed of it, and, with that view, I asked such an explanation as would enable me to form one.

In the explanation given, you do not insist on the right to trade, in British property with British vessels, directly with your enemies. Such a claim you admit would be preposterous. But you do insist by necessary implication, that France has no right to inhibit the importation into her ports of British manufactures, or the produce of the British soil, when the property of neutrals; and that, until France removes that inhibition, the United States are to be cut off by Great Britain from all trade whatever with her enemies.

On such a pretension it is almost impossible to reason. There is, I believe, no example of it in the history of past wars. Great Britain, the enemy of France, undertakes to regulate the trade of France; nor is that all; she tells her, that she must trade in British goods. If France and Great Britain were at peace, this pretension would not be set up, nor even thought of. Has Great Britain then acquired, in this respect, by war, rights which she has not in peace? And does she announce to neutral nations, that unless they consent to become the instruments of this policy,

their commerce shall be annihilated, their vessels shall be shut up in their own ports?

I might ask whether French goods are admitted into Great Britain, even in peace; and if they are, whether it be of right, or by the consent and policy of the British government?

That the property would be neutralized, does not affect the question. If the United States have no right to carry their own productions into France with the consent of the French government, how can they undertake to carry there those of Great Britain? In all cases it must depend on the interest and the will of the party.

Nor is it material to what extent, or by what powers, the trade to the continent is prohibited. If the powers who prohibit it, are at war with Great Britain, the prohibition is a necessary consequence of that state. If at peace, it is their own act, and whether it be voluntary or compulsive, they alone are answerable for it. If the act be taken at the instigation and under the influence of France, the most that can be said is, that it justifies reprisal against them by a similar measure; on no principle whatever can it be said to give any sanction to the conduct of Great Britain towards neutral nations.

The United States can have no objection to the employment of their commercial capital in the supply of France, and of the continent generally, with manufactures, and to comprise in the supply those of Great Britain, provided those powers will consent to it. But they cannot undertake to force such supplies on France or on any other power, in compliance with the claim of the British government, on principles incompatible with the rights of every independent nation; and they will not demand in favour of another power, what they cannot claim for themselves.

All that Great Britain could with reason complain of, was the inhibition by the French decrees, of the

lawful trade of neutrals with the British dominions. As soon as that inhibition ceased, her inhibition of our trade with France ought in like manner to have ceased. Having pledged herself to proceed *pari passu* with France in the revocation of their respective acts violating neutral rights, it has afforded just cause of complaint, and even of astonishment, to the United States, that the British government should have sanctioned the seizure and condemnation of American vessels, under the orders in council, after the revocation of the French decrees was announced, and even in the very moment when your mission, avowed to be conciliatory, was to have its effect. I will only add, that had it appeared finally, that France had failed to perform her engagement, it might at least have been expected, that Great Britain would not have molested such of the vessels of the United States as might be entering the ports of France on the faith of both governments, till that failure was clearly proved.

To many insinuations in your letter, I make no reply, because they sufficiently suggest the only one that would be proper.

If it were necessary to dwell on the impartiality which has been observed by the United States towards the two belligerents, I might ask, whether, if Great Britain had accepted the condition which was offered equally to her and France, by the act of May 1, 1810, and France had rejected it, there is cause to doubt that the non-importation act would have been carried into effect against France? No such doubt can possibly exist, because in a former instance when this government, trusting to a fulfilment by yours, of an arrangement which put an end to a non-intercourse with Great Britain, the non-intercourse was continued against France, who had not then repealed her decrees, as it was not doubted that England had done. Has it not been repeatedly declared to your govern-

ment, that if Great Britain would revoke her orders in council, the president would immediately cause the non-importation to cease? You well know that the same declaration has been often made to yourself, and that nothing is wanting to the removal of the existing obstructions to the commerce between the two countries, than a satisfactory assurance, which will be received with pleasure from yourself, that the orders in council are at an end.

By the remark in your letter of the 3d of July, that the blockade of May, 1806, had been included in the more comprehensive system of the orders in council of the following year, and that, if that blockade should be continued in force after the repeal of the orders in council, it would be in consequence of the special application of a sufficient naval force; I could not but infer your idea to be, that the repeal of the orders in council would necessarily involve the repeal of the blockade of May. I was the more readily induced to make this inference from the consideration, that if the blockade was not revoked by the repeal of the orders in council, there would be no necessity for giving notice that it would be continued, as by the further consideration, that, according to the decision of your court of admiralty, a blockade instituted by proclamation, does not cease by the removal of the force applied to it, nor without a formal notice by the government to that effect.

It is not, however, wished to discuss any question relative to the mode by which that blockade may be terminated. Its actual termination is the material object for consideration.

It is easy to shew, and it has already been abundantly shewn, that the blockade of May, 1806, is inconsistent in any view that may be taken of it with the law of nations. It is also easy to shew that, as now expounded, it is equally inconsistent with the sense of your government when the order was issued,

and this change is a sufficient reply to the remarks which you have applied to me personally.

If you will examine the order, you will find that it is strictly little more than a blockade of the coast from the Seine to Ostend. There is an express reservation in it, in favour of neutrals to any part of the coast between Brest and the Seine, and between Ostend and the Elbe. Neutral powers are permitted by it to take from their own ports every kind of produce without distinction, as to its origin, and to carry it to the continent, under that limitation, and with the exception only of contraband of war and enemy's property, and to bring thence to their own ports in return whatever articles they think fit. Why were contraband of war and enemy's property excepted, if a commerce even in those articles would not otherwise have been permitted under the reservation? No order was necessary to subject them to seizure; they were liable to it by the law of nations, as asserted by Great Britain.

Why then did the British government institute a blockade which, with respect to neutrals, was not vigorous as to the greater part of the coast comprised in it? If you will look to the state of things which then existed between the United States and Great Britain, you will find the answer... a controversy had taken place between our governments on a different topic, which was still depending. The British government had interfered with the trade between France and her allies, in the produce of their colonies. The just claim of the United States was then a subject of negotiation, and your government, professing its willingness to make a satisfactory arrangement of it, issued the order which allowed the trade, without making any concession as to the principle, reserving that for adjustment by treaty. It was in this light that I viewed, and in this sense that I represented

that order to my government, and in no other did I make any comment on it.

When you reflect that this order, by allowing the trade of neutrals in colonial productions to all that portion of the coast which was not rigorously blockaded, afforded to the United States an accommodation in a principal point then at issue between our governments, and of which their citizens extensively availed themselves; that that trade, and the question of blockade, and every other question in which the United States and Great Britain were interested, were then in a train of amicable negotiation; you will, I think, see the cause why the minister who then represented the United States with the British government, did not make a formal complaint against it. You have appealed to me, who happened to be that minister, and urged my silence as an evidence of my approbation of, or at least acquiescence in the blockade: an explanation of the cause of that supposed silence, is not less due to myself than to the true character of the transaction. With the minister with whom I had the honour to treat, I may add, that an official formal complaint was not likely to be resorted to, because friendly communications were invited and preferred. The want of such a document is no proof that the measure was approved by me, or that no complaint was made.

In recalling to my mind, as this incident naturally does, the manly character of that distinguished and illustrious statesman, and the confidence with which he inspired all those with whom he had to treat, I shall be permitted to express, as a slight tribute of respect to his memory, the very high consideration in which I have always held his great talents and virtues.

The United States have not, nor can they approve the blockade of an extensive coast. Nothing certainly can be inferred from any thing that has passed

relative to the blockade of May, 1806, to countenance such an inference.

It is seen with satisfaction that you still admit that the application of an adequate force is necessary to give a blockade a legal character, and that it will lose that character whenever that adequate force ceases to be applied. As it cannot be alleged that the application of any such adequate force has been continued and actually exists, in the case of the blockade of May, 1806, it would seem to be a fair inference that the repeal of the orders in council will leave no insuperable difficulty with respect to it. To suppose the contrary, would be to suppose that the orders in council, said to include that blockade, resting themselves on a principle of retaliation only, and not sustained by the application of an adequate force, would have the effect of sustaining a blockade admitted to require the application of an adequate force until such adequate force should actually take the place of the orders in council. Whenever any blockade is instituted, it will be a subject for consideration, and if the blockade be in conformity to the law of nations, there will be no disposition in this government to contest it.

I have the honour to be, &c.

(Signed)

JAS. MONROE.

Aug. J. Foster, esq. &c.

Mr. Monroe to Mr. Foster.

DEPARTMENT OF STATE,

October 17, 1811.

SIR,

I have the honour to communicate to you a copy of two letters from the *chargé d'affaires* of the United

States at Paris; to their *chargé d'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.

I have the honour to be, &c.

(Signed) JAS. MONROE.

Augustus J. Foster, esq. &c. &c. &c.

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, July 5, 1811.

SIR,

I observe by your letter of the 7th ultimo, 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 1st of November. Since the 1st 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 Greene*, 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 re-taken 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 Greene*, 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 *New Orleans Packet* has been some time waiting in the Garonne, with her return cargo on board, for an op-

portunity 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 1st of November, to which the decrees of Berlin and Milan could be applied.

I am, sir,

Very respectfully,

Your obedient servant,

(Signed) JONA. RUSSELL.

J. S. Smith, esquire,
Chargé-d'affaires, London.

Mr. Russell to Mr. J. S. Smith.

PARIS, July 14, 1811.

SIR,

I had the honour to address to you, on the 5th instant, a brief account of the Grace Ann Greene and of the New Orleans Packet. The proofs which these cases furnish, especially the latter, ought, when unopposed, as it is, by any conflicting 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 this evidence, 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 1st of November, and brought into this empire, or into ports under its controul. 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 inquiry 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 merchandise 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 unoffending 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 arriving spontaneously since the 1st November, to which they could be applied, and 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.

With much respect, I am, sir, &c. &c.

(Signed) JONA. RUSSELL.

J. S. Smith, esquire,
Chargé-d'affaires, London.

Mr. J. S. Smith to the Marquis Wellesley.

BENTINCK-STREET,
July 23d, 1811.

MY LORD,

The letter which I have the honour to present to your lordship, has been just received by me from Mr. Russell. So full and complete is this document, that I conceive it quite unnecessary to add any comments or remarks of my own. I shall, however, have much pleasure in furnishing any other explanations in my power, either verbal or written, that your lordship may desire.

Any doubts that may have existed here of the effectual repeal of the decrees of Berlin and Milan will now, I feel assured, be completely removed; and I feel equally confident that this revocation of the French edicts will be immediately followed by that of the orders in council, which affect the neutral commerce of the United States. I need not assure your lordship of the great satisfaction I shall have in communicating this event to my government.

As the "orders in council" have been ever declared by his majesty's government to be only of a retaliating character, and that they would cease to have any effect when the causes upon which they were founded

had ceased to exist, I trust that no argument is necessary to shew (if your lordship shall feel the force with which the accompanying document unequivocally demonstrates the abandonment, on the part of France, of her decrees) that the "orders in council" should be so revoked as to embrace the American vessels that have been captured by British cruizers since the first of November, the period at which the French edicts were revoked.

I have the honour to subjoin to this the circumstances of the two vessels to which Mr. Russell alludes in his letter.

The *Grace Ann Green* had been captured by an English cruizer; was retaken by her own crew, and arrived at Marseilles, where vessel and cargo were, notwithstanding, admitted.

The *New Orleans Packet* had been boarded by two English cruizers, and had been also at an English port, thus doubly transgressing against the French edicts. She arrived at Bordeaux, was seized by the director of the customs for these very transgressions, but, on the remonstrance of Mr. Russell, was immediately released, and has been admitted, vessel and cargo.

I have the honour, &c.

(Signed) J. S. SMITH.

The most noble
the marquis Wellesley.

Marquis Wellesley to J. S. Smith, esq.

FOREIGN OFFICE,
August 8, 1811.

SIR,

Your letter of the 23d ultimo has been under the consideration of his royal highness the prince re-

gent, and has received all the attention to which it is entitled.

I am commanded by his royal highness to acquaint you, that he has thought fit to postpone the answer to your letter until advices, which are hourly expected, from Mr. Foster shall have been received.

I have the honour to be,
With great respect and consideration,
Sir,

Your most obedient and humble servant,
(Signed) WELLESLEY.
J. S. Smith, esq. &c.

Lord Wellesley to J. S. Smith, esq.

FOREIGN OFFICE,
August 14, 1811.

SIR,
Since the date of my last letter, I have the honour 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 inclosure, to Mr. Foster, in order that those documents may receive full consideration in the progress of the discussions now depending in America.

I have the honour to be, &c.
(Signed) WELLESLEY.
J. S. Smith, esq. &c.

Mr. Foster to Mr. Monroe.

WASHINGTON, October 22, 1811.

SIR,
I had the honour to receive your letter of 17th instant, together with its three inclosures, on the road between Baltimore and this city; I had that of receiving, at the same time, your letter dated October 1, in answer to mine of the 26th 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 *chargé d'affaires* of the United 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 *chargé 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 mean while, 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 a 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 may view the demand made on the part of Great 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 this 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 candour would allow you, on a reconsideration, to put any other construction on the matter, and had my arguments had sufficient weight with you in shewing 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 25, 1810; and I beg to refer you to the message of the president of the United

States on the opening of congress in December, 1810, for a proof that the demand of Great 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 Great 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 endeavouring 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 unprecedented situation of things that have 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 it cannot be a secret to the United 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 so nearly 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 Great 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 United States to have a free and unrestricted trade with both belligerents, but the essential security and most important interests of America are not involved in the question as are those of Great Britain. France has levelled a blow which she hopes will prove deadly to the resources of Great 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 November 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 endeavouring to obtain the aid of the United States for the same purpose; and herein you will, as I had the honour 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 should 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 Great 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 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 honour to state to you, that the delay which took place in their condemnation, was not a consequence of any doubt existing in his majesty's govern-

ment, 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 United States' government not persisted in their unfriendly attitude towards Great 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 observations on these pretensions of Great Britain relative to the revocation of the French decrees, I beg to repeat that the sum of the demands 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 endeavouring 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 honourable 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 honour to be, &c.

(Signed)

AUG. J. FOSTER.

To the honourable

James Monroe, &c.

Mr. Monroe to Mr. Foster.

DEPARTMENT OF STATE,

October 29, 1811.

SIR,

I have had the honour 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 the 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 *chargé d'affaires* at London, in a document of which I had

the honour to transmit to 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, can but be increased, in finding that the communication which I had the honour 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 Great Britain, when neutralized, must be admitted into the ports of your enemies. This pretension, however vague the language heretofore held by your government, particularly by 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 honour to be, &c. &c.

(Signed) JAMES MONROE.

Augustus J. Foster, esquire, &c. &c. &c.

Mr. Foster to Mr. Monroe.

WASHINGTON, October 31, 1811.

SIR,

I did not reply at great length to the observations contained in your letter of the 1st instant, on the pretensions of Great Britain as relative to the French system, because you seemed to me to have argued as if but a part of the system continued, and even that part had ceased to be considered as a measure of war against Great Britain. For me to have allowed this, would have been at once to allow in the face of facts that the decrees of France were repealed, and that her unprecedented measures, avowedly pursued in defiance of the laws of nations, were become mere ordinary regulations of trade. I therefore thought fit to confine my answer to your remarks, to a general statement of the sum of the demands of Great Britain, which was, that France should, by effectually revoking her decrees, revert to the usual method of carrying on war as practised in civilized Europe.

The pretension of France to prohibit all commerce in articles of British origin, in every part of the continent, is one among the many violent innovations which are contained in the decrees, and which are preceded by the declaration of their being founded on a determination of the ruler of France, as he himself avowed, to revert to the principles which characterized the barbarism of the dark ages, and to forget all ideas of justice and even the common feelings of humanity in the new method of carrying on war adopted by him.

It is not, however, a question with Great Britain of mere commercial interest, as you seem to suppose, which is involved in the attempt by Bonaparte to blockade her both by sea and land, but one of feeling and of national honour, contending as we do against

the principles which he professes in his new system of warfare. It is impossible for us to submit to the doctrine that he has a right to compel the whole continent to break off all intercourse with us, and to seize upon vessels belonging to neutral nations, upon the sole plea of their having visited an English port, or of their being laden with articles of British or colonial produce, in whatsoever manner acquired.

This pretension, however, is but a part of that system, the whole of which, under our construction of the letter of M. Champagny of August 5, 1810, corroborated by many subsequent declarations of the French government, and not invalidated by any unequivocal declaration of a contrary tenor, must be considered as still in full force.

In the communication which you lately transmitted to me, I am sorry to repeat that I was unable to discover any facts which satisfactorily proved that the decrees had been actually repealed, and I have already repeatedly stated the reasons which too probably led to the restoration of a few of the American ships taken in pursuance of the Berlin and Milan decrees after November 1. Mr. Russell does not seem to deny that the decrees may still be kept in force, only he thinks they have assumed a municipal character; but in M. Champagny's declaration, ambiguous as it was, there is no such division of them into two different characters; for if the contingency required by the French minister took place, the Berlin and Milan decrees were to cease, according to his expression, without any qualification. If therefore a part of them remain, or be revived again, as seems to be allowed even here, why may not the whole be equally so? Where proof can be obtained of their existence, we have it, namely; in the ports of France in which vessels have been avowedly seized under their operation since November 1. Of their maritime existence we cannot so easily obtain evidence, because of the few

French ships of war which venture to leave their harbours. Who can doubt, however, but that, had the ruler of France a navy at his command equal to the enforcing of his violent decrees, he would soon shew that part of them to be no dead letter? The principle is not the less obnoxious because it is from necessity almost dormant for the moment, nor ought it therefore to be less an object to be strenuously resisted.

Allow me, sir, here to express my sincere regret that I have not as yet been able to convince you, by what I cannot but consider the strongest evidence of the continued existence of the French decrees, and consequently of the unfriendly policy of your government in enforcing the non-importation against us and opening the trade with our enemies. His royal highness will, I am convinced, learn with unfeigned sorrow, that such continues to be still the determination of America, and whatever restrictions on the commerce enjoyed by America in his majesty's dominions may ensue on the part of Great Britain, as retaliatory on the refusal by your government to admit the productions of Great Britain while they open their harbours to those of his majesty's enemies, they will, I am persuaded, be adopted with sincere pain, and with pleasure relinquished whenever this country shall resume her neutral position and impartial attitude between the two belligerents.

I have the honour to be, &c. &c. &c.

(Signed)

AUG. J. FOSTER.

The honourable James Monroe, &c.

CORRESPONDENCE

BETWEEN

MR. MONROE AND MR. FOSTER,

RELATIVE

To the encounter between the United States' frigate the President, and the British sloop of war Little Belt.

From Mr. Morier to Mr. Monroe.

BALTIMORE, June 26, 1811.

SIR,

I have the honour to enclose an official letter addressed to rear-admiral Sawyer by captain Bingham, commanding his Majesty's sloop the Little Belt, which contains an account of the late engagement between that ship and the American frigate the President.

In thus communicating to you without orders from his majesty's government this document, which in the most essential fact differs so materially from that of commodore Rodgers, I trust that this government will receive it as a proof of the sincere desire which exists with me, to open the way to an amicable arrangement of the question which may arise out of this unfortunate affair, when it shall be known to his majesty's government.

I have the honour to be, &c. &c.

(Signed) J. P. MORIER.

The honourable James Monroe, &c. &c.

Mr. Monroe to Mr. Morier.

DEPARTMENT OF STATE,

June 28, 1811.

SIR,

I had the honour to receive yesterday your letter of the 26th inst. communicating a statement from captain Bingham to admiral Sawyer, of the circumstances attending the late unfortunate encounter between the United States' frigate the President and his Britannic majesty's sloop the Little Belt.

It is to be regretted that the statement made by captain Bingham should have varied in any circumstance from that made by the commander of the American frigate. I flatter myself, with the disposition of the president, which I am authorized to express, to make it the subject of mutual and friendly explanations, that its disagreeable tendency will be obviated. I am induced to express this expectation with the more confidence, from the conciliatory manner in which you have made this communication.

I have the honour to be, &c.

(Signed) JAS. MONROE.

Mr. Morier, Chargé d'Affaires of his Britannic majesty.

Mr. Foster to Mr. Monroe.

WASHINGTON, July 3, 1811.

SIR,

The assurances which you did me the honour to give me yesterday verbally, that no instructions whatever had been given to commodore Rodgers which could, under any construction, be meant to authorize his attempting to recover by force any person claimed as an impressed American citizen from on

board any of his majesty's ships of war, were amply sufficient to convey to my mind every satisfaction upon that subject. The reports, however, current in the United States and connected with commodore Rodgers's conduct and proceedings, as well as the inferences which will be drawn from the expressions which he used to the captain of his majesty's sloop Little Belt, being of a tendency to create doubts in Great-Britain as to the nature of the authority under which he acted, I willingly accept your offer of making me the same statement in a more formal manner, in order that I may transmit it to my government, to prevent all possible mistake on so important a point.

The question arising out of the rencounter between the United States' frigate President and his majesty's sloop Little Belt, will then remain limited to the act itself. You are already, sir, in possession of the British commander's statement of the circumstances which attended it; his account and that of the American commodore, differ very materially with respect to some of the most important features of the transaction; but in this they agree, that the chace which brought on the action, commenced on the part of commodore Rodgers; for it cannot be maintained that the advance made by captain Bingham for the purpose of ascertaining if the sail descried by him was his majesty's ship Guerrier, which it appears he had orders to join, was for the purpose of chacing, even if that could be urged as a plea by the American commander. As soon as he found his signals unanswered, he bore away, until, to his infinite surprise, he found himself the object of the strange vessel's eager pursuit and hostile attitudes. What could be commodore Rodgers's intention is not apparent. That he could not discover at the distance of 70 or 100 yards that the ship before him was a flush deck sloop, though it was but a little after 8 o'clock

on the 16th of May; that he could not make out her colours at half-past 6 o'clock; that his guns were double shotted, and that with the security he possessed from the great force and superior sailing of the ship under his command, and the circumstance of belonging to a neutral nation, he did not rather hold off during the night if he wished to speak the sloop, than by running under her stern in a menacing attitude, incur the risk of provoking a misunderstanding, must appear unaccountable to the comprehension of every unprejudiced person, and will, I am sure, sir, seem to you a sufficient reason, if there were no other, to warrant my demanding that an examination be instituted into his conduct, with a view to suitable satisfaction being afforded to his majesty for the loss of so many of his subjects so wantonly slaughtered, and for the insult offered to his flag. But should captain Bingham's charges be brought home to commodore Rodgers of his having refused to state the name of the nation he belonged to, though asked to do so on their nearing each other in the dark, and of having fired a broadside into the sloop without provocation, which might at once have sunk so small a vessel, I am convinced I need only appeal to the justice of the American government, for that government to see in its proper light the magnitude of the outrage, and offer to his majesty every reparation that can appear due.

It is with great pleasure, sir, that I avail myself of this opportunity to acknowledge the promptness with which you came forward with the assurances alluded to in the first part of this letter, and the readiness which you shewed to receive any communications from me in regard to the unhappy occurrence which forms the subject of the remainder.

I have the honour to be, &c. &c.
 (Signed) AUG. J. FOSTER.

The honourable James Monroe, &c. &c. &c.

Mr. Monroe to Mr. Foster.

DEPARTMENT OF STATE,

July 16, 1811.

SIR,

I have had the honour to receive your note respecting the late encounter between the American frigate the President, and his Britannic majesty's sloop of war the Little Belt.

It is very satisfactory to find that you received the communication which I had the honour to make to you, in our first interview, on the subject of your inquiry, relative to that unfortunate occurrence, in the amicable spirit in which it was intended. Altho' the excitement, which had been produced by previous and recent aggressions, particularly by the impressment of American citizens from American vessels, even on the coast of the United States, was great, yet no order had been given by the government for the recovery by force of any citizen so impressed, from any British ship of war. The orders given to the commanders of the frigates, and other armed vessels of the United States, were for the protection of their coast, and of their commerce within the legitimate limits.

I need not repeat to you, sir, the sincere regret of this government, that such an encounter took place, and more especially that it should have produced the unfortunate consequences which attended it.

I have the honour to be, &c.

(Signed) JAS. MONROE.

Aug. J. Foster, esq. &c.

Mr. Foster to Mr. Monroe.

WASHINGTON, July 24, 1811.

SIR,

I have had the honour to receive your letter dated on the 16th instant, in answer to mine of the 3d,

in which I expressed a desire to have stated, in a more formal manner, your denial to me of orders having been given to commodore Rodgers, which could, under any construction, authorize that commander to attack any of his majesty's ships of war in search of any person claimed as an American seaman, and in which I also demanded that an examination should be instituted into that officer's conduct, with a view to suitable reparation being afforded to his majesty, for what appears a wanton and unprovoked attack made by the frigate under his command upon his majesty's sloop of war the Little Belt.

The denial I asked for, you have given me, and I beg to assure you, sir, that though I troubled you with the demand, because the extensiveness of the rumour, which had attributed such orders to the American government, had made it my duty so to do, yet I never entertained an idea for one moment, that the government of the United States could have issued such orders, because they must have been considered as manifestations of direct intentions of hostility, which would have been incompatible with the relations of amity subsisting between America and Great Britain.

On such a point, sir, a simple denial was all I asked, and what I expected to receive. It was therefore with pain that I found you had connected it with allusions to other topics, calculated to produce irritation, on which, whatever complaints you may have to make to me, I shall be ever ready to receive, and forward them for redress to the commander-in-chief of his majesty's naval forces at Halifax, or to his majesty's government; but the mentioning of which, in your note in answer to mine on a distinct subject of the most serious importance, you will pardon me if I must consider as matter of regret, especially as you wished me to receive the communication you made me, as given in an amicable spirit.

Moreover, from the tenor of the part of your letter in which you have connected the question of impressment with that of an attack on a British ship of war, an inference is forced upon me, which you surely never could have meant me to draw, but which, nevertheless, the passage conveys, namely — that *although* the government of the United States had not given orders for the recovery by force of any American citizen claimed from a British national ship, they still maintain they might have been justified in so doing. The right of searching a ship of war has been so positively disavowed on the part of his majesty's government, and so disclaimed by that of America, that I could not have expected any doubts would ever again have been thrown on the matter; and yet the language of your letter, until it is explained, will certainly authorize such doubts as far as relates to the American government.

I have no answer at all from you, sir, to my demand for an inquiry being instituted into the conduct of captain Rodgers. This omission has occasioned to me the more surprise, because, in addition to there appearing to be no cause why the government of America should decline to listen to so just a demand on my part, there seemed to be every reason why they should, even for their own satisfaction, have desired to clear up the circumstances of his most extraordinary proceeding. I will indeed frankly own to you, that I did think, on reaching this city, to have found that officer's conduct already, by the spontaneous act of the government of the United States, undergoing an examination, instead of hearing that he had been sent immediately to sea again, which seemed to denote an approbation of his behaviour; and I thought I could the more rely on this being the course the president would have pursued, from a consideration of that which his majesty's government had taken in the case of the Chesapeake, when every re-

paration practicable, at the instant the intelligence reached London of that unfortunate event, was made to you, sir, promptly and unasked for.

I feel the more regret, sir, at the course taken by your government in this affair, because I have been necessarily obliged, in consequence, to suspend carrying into execution that part of my instructions by which I was directed, immediately on my arrival here, to offer such further reparation for the attack on the Chesapeake frigate, as would, I am convinced, have proved satisfactory. I had the honour to state to you in our first interview, that I had such instructions, although I omitted to mention it in my note, because, as you may remember, I expressed to you at the time, it seemed to me the American government might feel more free to act as the justice of the case required, if the two subjects were kept unconnected; and in this opinion I thought you appeared to concur.

I have the honour to be,

With the highest consideration and respect,

Sir,

Your most obedient humble servant,

(Signed)

AUG. J. FOSTER.

To the honourable James Monroe,
Secretary of State.

Mr. Foster to Mr. Monroe.

PHILADELPHIA, Sept. 4, 1811.

SIR,

I have now, by an express messenger from England, received the commands of his royal highness the prince regent, acting in the name and on the behalf of his majesty, relative to the late violent ag-

gression committed by the United States frigate the President, on his majesty's ship Little Belt; and I have the honour of communicating to you the enclosed documents, which have been transmitted to me by my government to be laid before that of the United States, comprehending a copy of a letter from lord James Townshend, commanding officer at Halifax, dated May 30, 1811, (1); enclosing a statement of the action by the officers of the Little Belt, (2); the report of the commissioner of his majesty's navy board at Halifax, in respect to the damage done the Little Belt, (3); a copy of rear-admiral Sawyer's letter, (4); enclosing his instructions to capt. Bingham, (5); as well as a list of killed and wounded on board the sloop of war, (6); and, finally, a copy of the correspondence on the subject which took place between the marquis Wellesley and Mr. Smith, American *chargé d'affaires* in London, (7—8); of that of captain Bingham's official letter you are already in possession.

In communicating to you, sir, the documents, I am particularly directed to call your attention to the instructions of admiral Sawyer, which furnish the strongest evidence of the pacific and friendly intentions of his majesty's government towards this country. The very pointed manner in which the commander-in-chief on the Halifax station had enjoined captain Bingham to avoid giving offence to the government or subjects of the United States, is of itself presumptive proof of the truth of that officer's statement, even if there were not such strong evidence as appears from the deposition of the different officers on board his majesty's ship as to the action having been commenced by captain Rodgers.

His majesty's government were entitled to expect, as I have had already the honour to observe to you, sir, in my former letter, that the American government would have manifested a prompt disposition to ob-

viate, by an early disavowal and by just reparation, the necessary tendency of such an event to disturb the friendship subsisting between the two states, and this expectation was the more natural from the example afforded by his majesty's government in the case of the Chesapeake.

Such, however, not having been the case, I am commanded by his royal highness to lose no time in communicating to you the papers enclosed, which explain in the fullest manner the circumstances of the transaction, and the very great extent of the outrage committed, by which so many valuable lives were sacrificed, and in demanding the immediate disavowal, on the part of the United States, of the act of aggression committed against his majesty's ship, as also in requiring a just reparation of the injury received.

I have the honour, &c. &c.

(Signed) AUGS. J. FOSTER.

The honourable James Monroe, &c. &c.

No. I.

Lord J. Townshend to Mr. Croker.

HIS MAJESTY'S SHIP EOLUS.

Halifax Harbour, May 30th, 1811.

SIR,
As it may be of material consequence that his majesty's government should have the earliest information of a circumstance that has taken place on this coast, I have forwarded, and request you will lay before my lords commissioners of the admiralty, the copy of a letter which captain Bingham of his majesty's sloop Little Belt has sent to rear-admiral Sawyer,

recounting a severe action which took place on the evening of the 16th instant, between that ship and the United States' frigate President.

After having considered the whole circumstance, and judging it advisable to procure the strongest documents in my power for their lordships information, (the commander in chief not having returned from Bermuda) I have caused depositions to be taken of all the commissioned officers of the Little Belt, respecting the unpleasant business which I herewith enclose.

I am, sir, &c. &c. &c.

(Signed)

J. TOWNSHEND.

To J. W. Croker, esq. Admiralty.

No. 2.

Statement of the officers of his majesty's sloop the Little Belt.

THE officers of his majesty's sloop Little Belt Statement of the action between that sloop and the United States' frigate President, on the evening of the 16th instant; taken before the right honourable lord James Townshend, captain of his majesty's ship Eolus, and senior officer at Halifax, Nova Scotia, Charles John Austin, esquire, captain of his majesty's ship Cleopatra, and Alexander Gordon, esquire, commander of his majesty's sloop Rattler.

Lieutenant Moberly, senior lieutenant, states, that on the 16th instant, while cruising off the coast of America, cape Charles bearing west 54 miles, at 11 A. M. saw a strange sail; that she was a lugger, was reported from the mast-head, on the starboard beam; we then steering S. S. W. the wind aft or a little on the starboard quarter, on which took in our studding sails and hauled our wind for her on the starboard tack;

shortly after, made her out to be a ship. At 2 30 P. M. having then made out the chase to be a frigate with a commodore's broad pendant flying, being then about six miles distance, and not having answered any of our signals, viz. 275, private signal, and our number, concluded her to be the American frigate United States; shewed our colours and steered our course south, set studding sails; at 5 o'clock observed the frigate make all sail, and to keep more away for us; at 7 found she was gaining on us fast; captain Bingham then thinking it best to speak her before dark, shortened sail, and hove-to, colours up; we then making out her stars in her broad pendant, beat to quarters and got all clear for action, a second time having beat, before, at 2 P. M. double-shotted and double-breeched the guns; at 7 50 observed the frigate to have shortened sail to topsails, top-gallant sails and jib, and standing down as if with an intention of passing under our stern, wore twice to evade this: captain Bingham hailed, and was not answered; wore again; the frigate then hove-to close to us on the larboard beam, captain Bingham hailed the ship A-hoy, which was repeated word for word by the frigate; captain Bingham asked what ship that was, which was also repeated as before, and on asking a second time was answered by a broadside; captain Bingham was then standing on the midship gun, jumped off and gave orders to fire, which was done in less than a minute after her first fire, we being quite ready, guns pointed, and continued firing for about an hour, when the frigate ceased firing and hailed us to know what ship this was; captain Bingham answered his majesty's ship Little Belt, several times before he understood us; he then asked if our colours were down, No, was captain Bingham's answer; captain Bingham then hailed to know what ship that was, and was answered the United States' frigate, the name we could not understand; in the mean time the frigate had filled

and was standing from us; a short time after lost sight of her, hove-to for the night, having no sail to set. At day-light saw a sail to windward, made her out to be the same ship we had engaged; at 6 she bore up for us under easy sail; at 8 she passed within hail, asked permission to send a boat on board, which was granted; boat came on board, staid ten minutes, then returned; understood the frigate to be the President, belonging to the United States, commodore Rodgers; observed the President to fill, and stand on the starboard tack under her topsails.

Lieutenant Thomas Levell states, that on May 16, 1811, at 11 A. M. saw a strange sail from the mast-head, which was reported to be a lugger, having her main-top-gallant sail handed, fore and mizen set; we were then going nearly before the wind, turned the hands up, took in studding sails, and made sail in chace on the starboard tack; at 1 30 observed her to be a frigate, made the private signal, our number also, 275, neither of which she answered; observing her to have a blue broad pendant at her mast-head; at 2 wore ship, and steered our course south, hoisted our colours, observed her to be in chace of us, supposed her to be an American frigate, cleared ship for action. At 5 beat to quarters a second time, double-shotted the guns, and double-breeched those that were bad. At 7 30 shortened sail and hove-to; as she was coming up with us very fast, hoisted our colours, observed the stars in his broad pendant, wore ship three or four times to prevent his passing under our stern, which he evidently intended. At 8 hailed her when on the starboard beam, but received no answer; wore ship. At 8 10 she hauled her foresail up, and hove-to within half pistol-shot of our weather beam. Captain Bingham standing on the gun abaft the larboard gangway, hailed the ship Ahoy! which words were repeated. Captain Bingham hailed again, What ship is that? Which was again also re-

peated word for word, and she immediately fired a broadside; captain Bingham jumped off the gun and gave orders to fire, which we did instantly, the captains of the guns standing with the lanyards of the locks in their hands, and the guns pointed at her, continued firing about an hour, when she ceased and hailed us, What ship is that? Captain Bingham replied His majesty's ship Little Belt, several times before he understood us; he then asked what ship that was? They answered the United States' frigate, the name we did not understand, and asked if our colours were down? Captain Bingham answered No! He then filled on the starboard tack, we very soon lost sight of her; continued all night refitting; at day-light observed her laying-to to windward about 8 or 10 miles. About 6 she bore down under her topsails and foresail. At 8 he hailed, Ship ahoy! I'll send a boat on board if you please, sir. Very well, sir, was captain Bingham's answer. The boat came on board, and remained about ten minutes, or a quarter of an hour; after which he wore, and stood to the westward under his topsails.

Latitude 36 53, longitude 71 49. Cape Charles bearing west 50 miles.

Mr. James Franklin, boatswain, states, at half past 6 o'clock observed the frigate coming up under studding-sails on both sides; about half past 7 shortened sail and brought-to, hoisted the colours; at a quarter before 8 hailed, no answer, wore ship; about two minutes before 8 the ship was hailed; the captain's words were repeated twice, without making any answer; then he fired a whole broadside; about a minute returned a broadside from us, continued firing for about an hour, and then he ceased firing and hailed, and asked what ship this was, and he was answered by the captain the Little Belt, and he then asked if the colours were down, the answer was, No, and I heard the captain say they should not come down,

and ordered the starboard guns to be manned; then the captain hailed to know what ship that was? being under the forecastle, wounded, I could not hear the answer. I then came down below, and there was no more firing after.

Mr. Hinshelwood, purser, states, that on the 16th inst. at 11 A. M. saw a strange sail, made sail in chace of her; 1 30, observed her to be a frigate, made the private signal, our number and 275, neither of which were answered; at 2, made out a commodore's broad pendant, apparently an American, cleared for quarters, observed the frigate to be in chace of us; at 5, beat to quarters a second time; 7 30, hove-to and hoisted our colours; at 8, hailed her, no answer, wore ship; at 8 10, she hove-to, close to windward of us; captain Bingham standing on the gun abaft the larboard gangway, hailed, Ahoy! the ship, which they repeated; capt. B. asked, What ship is that? which was also repeated, and immediately gave us a broadside, commencing firing from the midships of the deck; captain B. jumped off the gun and gave orders to fire, which was instantly done; continued firing about an hour, observed the frigate to leave off firing; she hailed at the same time, and asked what ship this was; captain B. answered, His Britannic majesty's ship Little Belt, six or seven times before they understood; he then asked if our colours were down, to which capt. B. answered, No, and asked what ship that was; she answered, the United States' ship, the name we could not understand; she then made sail; at day-light, observed her to windward; at 6 she bore down, at 8 passed within hail, hailed the ship, and said he would send a boat on board, if capt. B. pleased; a boat came on board, and remained about a quarter of an hour; she then made sail to the westward.

Mr. William Turner, surgeon, states, that when steering to the southward from off New York, on

May 16th, 1811, at 11 A. M. a strange sail was reported to the westward, which was immediately given chace to; on nearing, observed her to be a frigate, standing to the eastward, with an American broad pendant at her main-top-gallant mast head. We then resumed our course to the southward, and shewed the ensign and pendant; stranger observed shortly after to alter her course to join us; when the Little Belt made more sail, strange frigate did the same; finding the stranger joined us fast, prepared for action, shortened sail and hove-to, some time before sun-set. Immediately after the Little Belt hove-to, the strange frigate shortened sail, coming down very slowly. I shortly after went below. At 10 minutes past 8 o'clock P. M. captain Bingham hailed the stranger twice, very loudly, but received no answer; about 5 minutes after, captain B. again hailed, and was answered from the frigate, to what purport I could not distinctly understand; captain B. again hailed twice, and immediately heard the frigate fire, and the whole passed over us. I then distinctly heard capt. B. give orders to fire away; we returned our broadside within the space of 20 seconds. The action continued with great vigour for about 45 minutes, to the best of my judgment.

We, the undersigned, have duly examined the officers herein named, belonging to his majesty's sloop Little Belt, respecting the attack made on that ship by the United States' frigate President, have received the above as a true statement of all the occurrences.

In witness whereof we have hereunto set our hands, on board his majesty's ship Æolus, Halifax harbour, Nova-Scotia, the 29th of May, 1811.

(Signed)

J. TOWNSHEND,
CHARLES JNO. AUSTIN,
ALEXR. GORDON.

No. 3.

Commissioner Inglefield to the Navy Board.

HALIFAX YARD, May 30, 1811.

GENTLEMEN,

I acquaint the board, that his majesty's sloop the Little Belt, returned to this port on Sunday last, almost a wreck, having on the 16th instant, off the Chesapeake, had an action, which lasted three quarters of an hour, with the American frigate the President, one of their heaviest ships, carrying upwards of fifty guns.

Having directed the master shipwright to examine her defects, I received from him the report which is herewith enclosed for the information of the board, and for the satisfaction of the lords commissioners of the admiralty, in ascertaining the extent of the injury received.

In addition to the damages detailed in the builders report, her sails and rigging are cut to pieces by shot.

I have the honour to be, &c. &c. &c.

(Signed) J. N. INGLEFIELD.

To the honourable the navy board.

Enclosure in Commissioner Inglefield's letter to the Navy Board.

HALIFAX YARD, May 28, 1811.

Report of the State and Condition of His Majesty's sloop Little Belt.

The short plank abaft the after port, with top timbers, spirketting and quick work above the spirketting of the larboard side much damaged by shot.

The strings and sheer strakes of each side, shot away in midships, and abreast of the fore channels of the larboard side.

The gun wales, and part of the hammock stanchion boards and rails in midship shot way.

Several of the fore and main chains and bolts of ditto, shot away.

The top timbers and strings in the way of the fore channel, and iron standards and larboard main bitt, shot away.

Several of the port timbers and lower hanging ports of the larboard side, much damaged by shot.

Part of the waterways, spirketting, and oak work of the upper deck, and timbers in the way of ditto, much damaged by the shot.

Part of the wales of the larboard side and plank of the top sides much damaged by shot.

A number of shot holes at load water mark and below ditto.

Part of the copper damaged.

The midship port timber damaged.

One beam and several planks of the poop deck much damaged by shot.

One pump between deck shot through.

The plank under the clamps much damaged.

Gun-room and cabin sky-lights much damaged.

One bumkin wanted.

Cabins in want of repair.

New tin work in the galley wanted.

Two planks in the upper deck decayed and w a shifting.

Several shot racks wanting.

Bowsprit shot through in the wake of the gammoning.

Fore mast shot through in two places.

Main mast ditto.

Mizen mast shot through above the cap.

Mizen top-gallant mast shot away.

Fore yard damaged by shot on the larboard quarter.
 Cross jack-yard damaged by shot.
 Drives boom decayed
 Main top-sail yard damaged by shot.
 One main topmast,
 One fore topmast,
 One fore topsail yard,
 One fore top gallant mast,
 One mizen top gallant mast,
 One main topsail yard,
 Spare spars on the booms,
 Also several others,
 A swinging boom wanted.
 The jolly boat and launch much damaged by the shot.

} All damaged and
 shattered by the
 shot.

(Signed) **WILLIAM HUGHES,**
Master shipwright.
J. PARRYIE,
Foreman ditto.

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 No. 4.

Copy of a letter from Rear-Admiral Sawyer to J. W. Croker, esq.

HIS MAJESTY'S SHIP AFRICA,

At Bermuda, June 11, 1811,

SIR,

Inclosed I transmit to you for the information of the lords commissioners of the Admiralty, a copy of a letter from captain Arthur Batt Bingham, commander of his majesty's sloop Little Belt, received

this day from lord James Townshend, captain of his majesty's ship *Æolus*, and senior officer at Halifax, by which their lordships will perceive he was attacked on the evening of May 16th last, when cruizing between Cape Henry and Cape Hatteras, by the United States' frigate the *President*, of 44 guns, commanded by commodore Rodgers, and that after a close action of three quarters of an hour, the American ship made sail from him.

Captain Bingham's modest, but full and clear statement, renders any comment from me unnecessary; and I have only to admire the extraordinary bravery and firmness with which himself, his officers and ship's company supported the honour of the British flag, when opposed to such an immense superiority of force. I have, however, deeply to lament the number of valuable British seamen and royal marines who have been killed or wounded on this unexpected occasion, a list of whose names is also inclosed, together with a copy of my order under which captain Bingham was cruizing.

I have the honour to be, &c.

(Signed) **HERBERT SAWYER,**
Rear-Admiral.

J. W. Croker, esq.

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 No. 5.

Copy of Rear-Admiral Sawyer's instructions to captain Bingham of H. M. sloop Little Belt.

By Herbert Sawyer, esquire, rear-admiral of the red, and commander in chief of his majesty's ships and vessels employed and to be employed in the river St. Laurence, along the coast of Nova Scotia, the Islands of Anticoste, Madelin.e, and St. John, and Cape Breton, the Bay of Fundy, and at and about the Island of Bermuda, or Somer's islands.

You are hereby required and directed to put to sea in his majesty's sloop under your command,

and proceed, without loss of time, off Charleston, where you may expect to meet captain Pechell, in the *Guerriere*, to whom you will deliver the packet you will herewith receive, and follow his orders for your further proceedings. Should you not meet the *Guerriere* off Charleston, you will stand to the northward, and use your utmost endeavours to join him off the capes of Virginia or off New York, and in the event of not meeting the *Guerriere* you will cruize as long as your provisions and water will last, and then repair to Halifax for further orders. You are to pay due regard to protecting the trade of his majesty's subjects, and the capture or destruction of the ships of the enemy. You are to be particularly careful not to give any just cause of offence to the government or subjects of the United States of America, and to give very particular orders to this effect to the officers you may have occasion to send on board ships under the American flag. You are not to anchor in any of the American ports, but in case of absolute necessity; and then put to sea again as soon as possible.

Given under my hand at Bermuda, this 19th of April, 1811.

(Signed) **HERBERT SAWYER.**

By command of the rear-admiral,

(Signed) **H. W. SOMERVILLE.**

To Arthur Batt Bingham, esq.
commander of his majesty's
Sloop *Little Belt*.

Return of officers, petty officers, seamen and marines killed and wounded on board his majesty's Sloop Little Belt, Arthur Batt Bingham, esq. commander, in action with the American frigate President, the 16th of May, 1811.

Mr. Samuel Woodward, midshipman,	killed.
Charles Bennet, captain fore top,	do.
Jacob Greaves, carpenter's crew,	do.
Wm. Shippard, gunner's mate,	do.
George Wilson, able,	do.
Robert Liversage, able,	do.
Jas. Gray, ordinary,	do.
Rt. Harwood, ordinary,	do.
John Pardoe, private marine,	do.
Danl. Kilham, L. M.	dangerously wounded, died 10 hours after the action.
Robert Coody, ordinary,	do. do. do. died 20 hours after the action.
John Randall, able,	do. do. do.
Nicholas Manager, gunner's crew,	do. do. do.
Mr. J. M'Queen, acting master,	severely wounded.
Jas. Dunn, (2) captain main top,	do. do.
James Lawrence, able,	do. do.
John Richards, able,	do. do.
Thomas Ives, able,	do. do.
Michael Skinners, L. M.	do. do.
Wm. Fern, boy,	do. do.
David Dowd, marine,	do. do.
Wm. Harold, do.	do. do.
Jas. Franklin, boatswain,	slightly wounded.
Benj. Angel, carpenter,	do. do.
Peter M'Cashell, capt. mast,	do. do.
Wm. Andrews, ordinary,	do. do.
Wm. Western, boy,	do. do.
Edward Graham, able,	do. do.
George Delany, able,	do. do.
George Roberts, boy,	do. do.
George Shoard, marine,	do. do.
Daniel Long, marine,	do. do.

(Signed)

A. B. BINGHAM, Capt.

WM. TURNER, 2d Surg.

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No. 7.

Lord Wellesley to Mr. J. S. Smith.

FOREIGN OFFICE,

July 2, 1811.

SIR,

I am commanded by his royal highness the prince regent, to transmit to you the inclosed official documents, and to request that you will be pleased to furnish me with any explanation which you may have received from the government of the United States, of the transaction to which they refer.

I have the honour to be, &c.

(Signed)

WELLESLEY.

J. S. Smith, esq. &c.

No. 8.

Mr. J. S. Smith to the Marquis Wellesley.

BENTINCK STREET,

July 3d, 1811.

MY LORD,

I have the honour to acknowledge the reception of the documents transmitted to me yesterday by your lordship; and in reply to the request that I should furnish an explanation of the transaction to which they refer, have to state that to this moment no information has been received by me from my government on this subject; but from the known justice of the United States, and their uniform desire to preserve harmony with Great Britain, his majesty's government can be assured that they will never be unwilling to repair any injury they are conscious of having committed.

I have the honour to be, &c.

(Signed)

J. S. SMITH.

The most noble,
the marquis Wellesley.

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Mr. Monroe to Mr. Foster.

DEPARTMENT OF STATE,

Sept. 14, 1811.

SIR,

I have had the honour to receive your letter of the 4th inst. respecting the encounter between the United States' frigate the President and his Britannic majesty's ship Little Belt, which I have laid before the President of the United States.

In the first interview which took place between us, after your arrival at Washington, I stated explicitly that no instruction had been given to take any seaman from on board a British ship of war, nor any order whatever of a hostile nature. I made the same declaration afterwards, at your request, in a more formal manner; and it is with the same frankness that I now again repeat it.

Such a declaration was deemed proper in order to obviate misapprehensions, which might obstruct any conciliatory and satisfactory propositions with which you might be charged. It was in conformity also with the candour and friendly policy which have been shewn by this government, in all its transactions with Great Britain.

If the answer to your former letter was limited to this disavowal, of hostile intentions on the part of this government, it need scarcely be remarked that no further view of the subject could then, nor as yet can, be entered into, on the demand of the British government, without forgetting an essential preliminary to such a demand.

It might be added, that with the circumstances of the transaction, as officially before this government, the true ground on which it claimed attention, was that of a violent aggression by a British on an Ameri-

can ship, in a situation and manner authorizing the strongest appeal to the British government for redress. If an instant representation and demand to that effect were not made, it was a proof only that this government permitted the event of the encounter to temper the feelings and retard the complaint, prompted by the origin and character of it.

It is not seen without surprise, that the case of the Chesapeake is cited as an example, supporting a demand of reparation, in the present case. No other remark will be made, than that the fifth year is now elapsing without reparation in that case, although so palpably and even confessedly due to the rights of the United States, and the honour of their flag.

In the instruction to captain Bingham thus frankly communicated, the President sees a token of amity and conciliation, which, if pursued in the extent corresponding with that in which these sentiments are entertained by the United States, must hasten a termination of every controversy which has so long subsisted between the two countries.

I have the honour to be, &c.

(Signed) JAS. MONROE.

Augustus J. Foster, esq. &c.

Mr. Monroe to Mr. Foster.

DEPARTMENT OF STATE,

October 11, 1811.

SIR,

I have the honour to transmit to you a copy of the proceedings of a court of inquiry, held by order of the President, on the conduct of commodore Rodgers, in the late encounter between a frigate of the United States the President, and his Britannic majesty's ship the Little Belt.

The result of this inquiry, which was conducted in public, in a manner the most fair and impartial, and established by the concurrent testimony of all the officers of the American ship, and of others whom it was proper to summon, cannot, it is presumed, leave a doubt in the mind of any one, that captain Bingham made the attack, and without a justifiable cause.

That commodore Rodgers pursued a vessel which had at first pursued him, and hailed her as soon as he approached within a suitable distance, are circumstances which can be of no avail to captain Bingham. The United States have a right to know the national character of the armed ships which hover on their coast, and whether they visit it with friendly or illicit views. It is a right inseparable from the sovereignty of every independent state, and intimately connected with their tranquillity and peace. All nations exercise it, and none with more rigour, or at a greater distance from the coast, than Great-Britain herself, nor any on more justifiable grounds than the United States. In addition to the considerations which have recommended this precaution to other powers, it is rendered of the more importance to the United States, by the practice of armed vessels from the West Indies, in visiting our coast for unauthorized and even piratical purposes. Instances have also occurred, in which the commanders of British ships of war, after impressing seamen from American vessels, have concealed their names, and the names of their ships, whereby an application to their government for the reparation due for such outrages, with the requisite certainty, is rendered impracticable. For these reasons, the conduct of commodore Rodgers in approaching the Little Belt to make the necessary inquiries, and exchange a friendly salute, was strictly correct.

The President, therefore, can regard the act of captain Bingham no otherwise than as a hostile aggression

on the flag of the United States, and he is persuaded that his Britannic majesty, viewing it in the same light, will bestow on it the attention which it merits.

I have the honour to be, &c.

(Signed) JAS. MONROE

Augustus J. Foster, esq. &c. &c. &c.

Mr. Foster to Mr. Monroe.

WASHINGTON, Oct. 24, 1811.

SIR,

I have had the honour to receive your letter of the 11th instant, inclosing a copy of the proceedings of a court of inquiry held by order of the president of the United States on the conduct of commodore Rodgers, in the late encounter between a frigate of the United States, the President, and his majesty's ship the Little Belt, fixing on captain Bingham the charge of having commenced the engagement, and claiming in consequence the attention of his majesty's government towards it, as to an act of hostility on the part of the British officer.

I may be permitted to remind you, sir, that after I had ascertained from you, that no hostile intentions on the part of the government of the United States were connected with the proceedings of captain Rodgers, all I asked in the first instance was, that the President of the United States would be pleased to order an inquiry into his conduct, which had tended so seriously to interrupt the harmony subsisting between our two countries, and which, having hitherto received no palliation whatever from any evidence in contradiction to captain Bingham's statement, as officially transmitted to his majesty's government, must have continued to appear to them to be utterly incapable of receiving any.

The document you have now done me the honour to communicate to me, with the copy annexed of captain Rodgers's letter (for the first time officially before me), is, however, so far satisfactory, as it shews that captain Rodgers has endeavoured to exculpate himself, exhibiting the ground on which he rests his defence, and I shall without delay transmit it to be laid before his royal highness the prince regent. It certainly proves a most unaccountable difference to exist between the statement of the commander and officers of the Little Belt, and those of the President, as to the firing of the first gun; but I must remark, that from the concurrent testimony of several of the officers of the United States' ship, as to the orders given by captain Rodgers on nearing the Little Belt, there appears to have been an impression on his mind, that an encounter was to ensue; and, as the Little Belt was evidently endeavouring to avoid him, such an idea, it would seem, could only have arisen from the opinion he entertained of his own proceedings as being likely to bring it on.

I take this occasion to acknowledge the receipt of your letter dated September 14th, in answer to mine of the 2d, a copy of which I immediately forwarded to my government.

I have the honour to be,

With the highest consideration and respect,

Sir,

Your most obedient servant,

(Signed) AUG. J. FOSTER.

The hon. James Monroe, &c. &c. &c.

** For the proceedings of the court of inquiry, in relation to the conduct of commodore Rodgers, see the conclusion of these documents.

CORRESPONDENCE

BETWEEN

MR. MONROE AND MR. FOSTER,

RELATIVE TO

THE FLORIDAS.

Mr. Foster to Mr. Monroe.

WASHINGTON, July 2, 1811.

SIR,

The attention of his majesty's government has of late been called to the measures pursued by the United States, for the military occupation of West Florida. The language held by the president, at the opening of the late session of congress, the hostile demonstrations made by the American forces under captain Gaines, the actual summoning of the fort of Mobile, and the bill submitted to the approbation of the American legislature, for the interior administration of the province, are so many direct and positive proofs that the government of America is prepared to subject the province of West Florida to the authority of the United States.

The Spanish minister in London addressed a note, in the month of March last, to his majesty's secretary of state for foreign affairs, expressing in sufficient detail the feelings of the government of Spain, respecting this unprovoked aggression on the integrity of that monarchy.

Mr. Morier, in his note to Mr. Smith of December 15, 1810, has already reminded the American government of the intimate alliance subsisting between his majesty and Spain, and he has desired such explanations on the subject, as might convince his majesty of the pacific disposition of the United States towards Spain. Mr. Smith in his reply has stated, it was evident that no hostile or unfriendly purpose was entertained by America towards Spain; and that the American minister at his majesty's court had been enabled to make whatever explanations might comport with the frank and conciliatory spirit which had been invariably manifested on the part of the United States.

Since the date of this correspondence Mr. Pinkney has offered no explanation whatever, of the motives which have actuated the conduct of the United States in this transaction; a bill has been introduced into congress for the establishment, government, and protection of the territory of the Mobile, and the fortress of that name has been summoned without effect.

His royal highness the prince regent, in the name and on the behalf of his majesty, is still willing to hope, that the American government has not been urged to this step by ambitious motives, or by a desire of foreign conquest and territorial aggrandizement. It would be satisfactory, however, to be enabled to ascertain that no consideration connected with the present state of Spain, has induced America to despoil that monarchy of a valuable foreign colony.

The government of the United States contends that the right to the possession of a certain part of West Florida, will not be less open to discussion in the occupation of America, than under the government of Spain.

But the government of the United States, under this pretext, cannot expect to avoid the reproach,

which must attend the ungenerous and unprovoked seizure of a foreign colony, while the parent state is engaged in a noble contest for independence, against a most unjustifiable and violent invasion of the rights both of the monarch and people of Spain.

While I wait, therefore, for an explanation from you, sir, as to the motives which led to this unjust aggression by the United States, on the territories of his majesty's ally, I must consider it as my duty to lose no time in fulfilling the orders of his royal highness the prince regent, by which I am commanded, in the event of its appearing on my arrival in this city, that the United States still persevere by menaces and active demonstration to claim the military occupation of West Florida, notwithstanding the remonstrances of his majesty's *chargé-d'affaires*, and the manifest injustice of the act, to present to you the solemn protest of his royal highness, in the name and on the behalf of his majesty, against an attempt so contrary to every principle of public justice, faith, and national honour, and so injurious to the alliance subsisting between his majesty and the Spanish nation.

I have the honour to be, &c. &c. &c.

(Signed) AUG. J. FOSTER.

The honourable James Monroe, &c.

Mr. Monroe to Mr. Foster.

DEPARTMENT OF STATE,

July 8, 1811.

SIR,

I have had the honour to receive the note which you have presented, by the order of his royal highness

the prince regent, to protest, in behalf of the regency of Spain, against the possession lately taken, by the United States, of certain parts of West Florida.

Although the president cannot admit the right of Great Britain to interfere in any question relating to that province, he is willing to explain, in a friendly manner, the considerations which induced the United States to take the step, against which you have been ordered to protest.

It is to be inferred from your view of the subject, that the British government has been taught to believe, that the United States seized a moment of national embarrassment, to wrest from Spain a province to which they had no right, and that they were prompted to it by their interest alone, and a knowledge that Spain could not defend it. Nothing, however, is more remote from the fact, than the presumption on which your government appears to have acted. Examples of so unworthy a conduct, are unfortunately too frequent in the history of nations; but the United States have not followed them. The President had persuaded himself that the unequivocal proofs which the United States have given, in all their transactions with foreign powers, and particularly with Spain, of an upright and liberal policy, would have shielded them from so unmerited a suspicion. He is satisfied that nothing is wanting but a correct knowledge of facts, completely to dissipate it.

I might bring to your view a long catalogue of injuries, which the United States have received from Spain, since the conclusion of their revolutionary war, any one of which would most probably have been considered cause of war, and resented as such, by other powers. I will mention two of these only; the spoliations that were committed on their commerce to a great amount in the last war, and the suppression of their deposit at New Orleans just before the commencement of the present war, in violation of a so-

lemn treaty; for neither of which injuries has any reparation or atonement been made. For injuries like those of the first class, it is known to you that Great Britain and France made indemnity. The United States, however, do not rely on these injuries for a justification of their conduct in this transaction; although their claims to reparation for them are by no means relinquished, and, it is to be presumed, will not always be neglected.

When I inform you that the province of West Florida, to the Perdido, was a part of Louisiana while the whole province formerly belonged to France; that although it was afterwards separated from the other part, yet that both parts were again re-united, in the hands of Spain, and by her reconveyed to France, in which state the entire province of Louisiana was ceded to the United States in 1803; that in accepting the cession, and paying for the territory ceded, the United States understood and believed, that they paid for the country as far as the Perdido, as part of Louisiana; and that, on a conviction of their right, they included in their laws provisions adapted to the cession in that extent; it cannot fail to be a cause of surprise to the prince regent, that they did not proceed to take possession of the territory in question as soon as the treaty was ratified. There was nothing in the circumstances of Spain, at that time, that could have forbidden the measure. In denying the right of the United States to this territory, her government invited negotiation on that, and every other point, in contestation between the parties. The United States accepted the invitation, in the hope that it would secure an adjustment, and reparation for every injury which had been received, and lead to the restoration of perfect harmony between the two countries; but in that hope they were disappointed.

Since the year 1805, the period of the last negotiation with Spain, the province of West Florida has re-

mained in a situation altogether incompatible with the welfare of these states. The government of Spain has scarcely been felt there; in consequence of which the affairs of that province had fallen into disorder. Of that circumstance, however, the United States took no advantage. It was not until the last year, when the inhabitants perceiving that all authority over them had ceased, rose in a body with intention to take the country into their own hands, that the American government interposed. It was impossible for the United States to behold with indifference, a movement in which they were so deeply interested. The president would have incurred the censure of the nation, if he had suffered that province to be wrested from the United States, under a pretext of wresting it from Spain. In taking possession of it, in their name, and under their authority, except in the part which was occupied by the Spanish troops, who have not been disturbed, he defended the rights and secured the peace of the nation, and even consulted the honour of Spain herself. By this event, the United States have acquired no new title to West Florida. They wanted none. In adjusting hereafter all the other points which remain to be adjusted with Spain, and which it is proposed to make the subject of amicable negotiation as soon as the government of Spain shall be settled, her claim to this territory may also be brought into view, and receive all the attention which is due to it.

Aware that this transaction might be misconceived and misrepresented, the President deemed it a proper subject of instruction to the ministers of the United States at foreign courts, to place it in a true light before them. Such an instruction was forwarded to Mr. Pinkney, their late minister plenipotentiary at London, who would have executed it, had not the termination of his mission prevented it. The president cannot doubt that the frank and candid explana-

tion, which I have now given, by his order, of the considerations which induced the United States to take possession of this country, will be perfectly satisfactory to his royal highness the prince regent.

With great respect and consideration,

I have the honour to be,

Sir,

Your most obedient servant,

(Signed) JAS. MONROE.

Augustus J. Foster, esquire, &c. &c.

Mr. Foster to Mr. Monroe.

PHILADELPHIA, Sept. 5, 1811.

SIR,

The Chevalier d'Onis, who has been appointed minister from his Catholic majesty to the United States, has written to inform me, that he understands by letters from the governor of East Florida, under date of the 14th ultimo, that governor Matthews, of the State of Georgia, was at that time at Newtown, St. Mary, on the frontiers of Florida, for the purpose of treating with the inhabitants of that province for its being delivered up to the United States' government; that he was with this view using every method of seduction to effect his purpose, offering to each white inhabitant who would side with him 50 acres of land and the guarantee of his religion and property; stipulating also that the American govern-

ment would pay the debts of the Spanish government, whether due in pensions or otherwise; and that he would cause the officers and soldiers of the garrisons to be conveyed to such place as should be indicated, provided they did not rather choose to enter into the service of the United States.

M. D'Onis has done me the honour to communicate to me a note which he purposes transmitting to you, sir, in consequence of this detailed and most extraordinary intelligence; and considering the intimate alliance subsisting between Spain and Great Britain, as well as the circumstances under which he is placed in this country, he has urgently requested that I would accompany his representation with a letter on my part in support of it.

After the solemn asseverations which you gave me in the month of July, that no intentions hostile to the Spanish interests in Florida existed on the part of your government, I am wholly unable to suppose that General Matthews can have had orders from the President for the conduct which he is stated to be pursuing; but the measures he is said to be taking in corresponding with traitors, and in endeavouring by bribery and every art of seduction to infuse a spirit of rebellion into the subjects of the king of Spain in those quarters, are such as to create the liveliest inquietude, and to call for the most early interference on the part of the government of the United States.

The government of the United States are well aware of the deep interest which his royal highness the prince regent takes in the security of Florida, for any attempt to occupy the eastern part of which by the United States, not even the slightest pretexts could be alleged, such as were brought forward in the endeavour to justify the aggression on West Florida.

I conceive it therefore to be my duty, sir, in consideration of the alliance subsisting between Spain and Great Britain, and the interests of his majesty's sub-

jects in the West-India Islands; so deeply involved in the security of East Florida, as well as in pursuance of the orders of my government, in case of any attempt against that country, to lose no time in calling upon you for an explanation of the alarming steps which governor Matthews is stated to be taking for subverting the Spanish authority in that country, requesting to be informed by you upon what authority he can be acting, and what measures have been taken to put a stop to his proceedings.

I have the honour to be, &c.

(Signed) AUG. J. FOSTER.

The honourable James Monroe, &c. &c.

Mr. Monroe to Mr. Foster.

November 2d, 1811.

SIR,

I have had the honour to receive your letter of September 5th, and to submit it to the view of the President.

The principles which have governed the United States in their measures relative to West Florida, have already been explained to you. With equal frankness I shall now communicate the part they have acted with respect to East Florida.

In the letter which I had the honour to address to you on the 8th of July, I stated the injuries which the United States had received from Spain since their revolutionary war, and particularly by spoliations on their commerce, in the last war to a great amount, and of the suppression of their right of deposit at

New Orleans just before the commencement of the present war, for neither of which had reparation been made. A claim to indemnity for those injuries, is altogether unconnected with the question relating to West Florida, which was acquired by cession from France, in 1803.

The government of Spain has never denied the right of the United States to a just indemnity for spoliations on their commerce. In 1802, it explicitly admitted this right by entering into a convention, the subject of which was to adjust the amount of the claim, with a view to indemnity. The subsequent injury, by the suppression of the deposit of New Orleans, produced an important change in the relations between the parties, which has never been accommodated. The United States saw in that measure eminent cause of war; and, that war did not immediately follow it, cannot be considered in any other light than as a proof of their moderation and pacific policy. The executive could not believe that the government of Spain would refuse to the United States the justice due for these accumulated injuries, when the subject should be brought solemnly before it by a special mission. It is known that an envoy extraordinary was sent to Madrid in 1805, on this subject, and that the mission did not accomplish the object intended by it.

It is proper to observe, that in the negotiation with Spain, in 1805, the injuries complained of by the United States, of the first class, were again substantially admitted, to a certain extent, as was that also occasioned by the suppression of the deposit at New Orleans, although the Spanish government, by disclaiming the act, and imputing it to the intendant, sought to avoid the responsibility due from it; that to make indemnity to the United States for injuries of every kind, a cession of the whole territory claimed by Spain eastward of the Mississippi, was made the

subject of negotiation, and that the amount of the sum demanded for it, was the sole cause that a treaty was not then formed, and the territory ceded.

The United States have considered the government of Spain indebted to them a greater sum for the injuries above stated, than the province of East Florida can, by any fair standard between the parties, be estimated at. They have looked to this province for their indemnity, and with the greater reason, because the government of Spain itself has countenanced it. That they have suffered their just claims to remain so long unsatisfied, is a new and strong proof of their moderation, as it is of their respect for the disordered condition of that power. There is, however, a period beyond which those claims ought not to be neglected. It would be highly improper for the United States, in their respect for Spain, to forget what they owe to their own character and to the rights of their injured citizens.

Under these circumstances it would be equally unjust and dishonourable in the United States to suffer East Florida to pass into the possession of any other power. Unjust, because they would thereby lose the only indemnity within their reach, for injuries which ought long since to have been redressed. Dishonourable, because in permitting another power to wrest from them that indemnity, their inactivity and acquiescence could only be imputed to unworthy motives. Situated as East Florida is, cut off from the other possessions of Spain, and surrounded in a great measure by the territory of the United States; and having also an important bearing on their commerce, no other power could think of taking possession of it, with other than hostile views to them. Nor could any other power take possession of it without endangering their prosperity and best interests.

The United States have not been ignorant or inattentive to what has been agitated in Europe at differ-

ent periods since the commencement of the present war, in regard to the Spanish provinces of this hemisphere; nor have they been unmindful of the consequences into which the disorder of Spain might lead in regard to the province in question, without due care to prevent it. They have been persuaded, that remissness on their part might invite the danger, if it had not already done it, which it is so much their interest and desire to prevent. Deeply impressed with these considerations, and anxious, while they acquitted themselves to the just claims of their constituents, to preserve friendship with other powers, the subject was brought before the congress at its last session, when an act was passed, authorizing the executive to accept possession of East Florida from the local authorities, or to take it against the attempt of a foreign power to occupy it, holding it in either case subject to future and friendly negotiation. This act therefore evinces the just and amicable views by which the United States have been governed towards Spain, in the measure authorized by it. Our ministers at London and Paris were immediately apprized of the act, and instructed to communicate the purport of it to both governments, and to explain at the same time, in the most friendly manner, the motives which led to it. The president could not doubt that such an explanation would give all the satisfaction that was intended by it. By a late letter from the American *chargé des affaires* at London, I observe that this explanation was made to your government in the month of last. That it was not sooner made was owing to the departure of the minister plenipotentiary of the United States before the instruction was received.

I am persuaded, sir, that you will see, in this view of the subject, very strong proof of the just and amicable disposition of the United States towards Spain, of which I treated in the conference to which you

have alluded. The same disposition still exists; but it must be understood that it cannot be indulged longer than may comport with the safety, as well as with the rights and honour of the nation.

I have the honour to be, &c.

(Signed) JAS. MONROE.

Aug. J. Foster, esq. &c.

[Faint, mostly illegible text, likely bleed-through from the reverse side of the page.]

CORRESPONDENCE

BETWEEN MR. PINKNEY AND LORD WELLESLEY.

Mr. Pinkney to Mr. Smith.

LONDON, January 17, 1811.

SIR,

I had the honour to receive on the 5th instant, while I was confined by a severe illness, your letter of the 15th of November, and as soon as I was able, prepared a note to lord Wellesley in conformity with it.

On the 3d instant I had received a letter from lord Wellesley, bearing date the 29th ultimo, on the subjects of the orders in council and the British blockades, to which I was anxious to reply at the same time that I obeyed the orders of the president signified in your letter above mentioned. I prepared an answer accordingly, and sent it in with the other note and a note of the 15th, respecting two American schooners lately captured on their way to Bourdeaux, for a breach of the orders in council. Copies of all these papers are enclosed.

My answer to lord Wellesley's letter was written under the pressure of indisposition, and the influence of more indignation than could well be suppressed. His letter proves, what scarcely required proof, that if the present government continues, we cannot be friends with England. I need not analyse it to you.

I am still so weak as to find it convenient to make this letter a short one, and will therefore only add, that I have derived great satisfaction from your instructions of the 15th of November, and have determined to return to the United States in the Essex. She will go to L'Orient for Mr. Grayson, and then come to Cowes for me and my family. I calculate on sailing about the last of February.

The dispatches by the Essex were delivered to me by lieutenant Rodgers on Sunday.

I have the honour, &c. &c.

(Signed) W. M. PINKNEY.

The honourable R. Smith, &c.

Lord Wellesley to Mr. Pinkney.

FOREIGN OFFICE,

December 29, 1810.

SIR,

In acknowledging the receipt of your letter of the 10th instant, I must express my regret that you should have thought it necessary to introduce into that letter any topics which might tend to interrupt the conciliatory spirit, in which it is the sincere disposition of his majesty's government to conduct every negotiation with the government of the United States.

From an anxious desire to avoid all discussions of that tendency, I shall proceed without any further observation to communicate to you the view, which his majesty's government has taken of the principal

* This letter was not received till January 3d, 1811, at night.

question which formed the object of my inquiry, during our conference of the 5th instant. The letter of the French minister for foreign affairs, to the American minister at Paris, of the 9th August, 1810, did not appear to his majesty's government to contain such a notification of the repeal of the French decrees of Berlin and Milan, as could justify his majesty's government in repealing the British orders in council. That letter states "that the decrees of Berlin and Milan are revoked, and that from the 1st of November, 1810, they will cease to be in force, it being understood that in consequence of this declaration, the English shall revoke their orders in council and renounce the new principles of blockade which they have attempted to establish." The purport of this declaration appeared to be, that the repeal of the decrees of Berlin and Milan would take effect from the 1st of November, provided that Great Britain antecedently to that day, and in consequence of this declaration, should revoke the orders in council, and should renounce those principles of blockade, which the French government alleged to be new. A separate condition, relating to America, seemed also to be contained in this declaration, by which America might understand, that the decrees of Berlin and Milan would be actually repealed on the 1st of November, 1810, provided that America should resent any refusal of the British government to renounce the new principles of blockade, and to revoke the orders in council.

By your explanation it appears, that the American government understands the letter of the French minister as announcing an absolute repeal, on the 1st of November, 1810, of the French decrees of Berlin and Milan; which repeal, however, is not to continue in force unless the British government, within a reasonable time after the 1st of November, 1810, shall fulfil

the two conditions stated distinctly in the letter of the French minister. Under this explanation, if nothing more had been required from Great Britain, for the purpose of securing the continuance of the repeal of the French decrees, than the repeal of our orders in council, I should not have hesitated to declare the perfect readiness of this government to fulfil that condition. On these terms, the British government has always been sincerely disposed to repeal the orders in council. It appears, however, not only by the letter of the French minister, but by your explanation, that the repeal of the orders in council will not satisfy either the French or the American government. The British government is further required, by the letter of the French minister, to renounce those principles of blockade which the French government alleges to be new. A reference to the terms of the Berlin decree will serve to explain the extent of this requisition. The Berlin decree states, that Great Britain "extends the right of blockade to commercial unfortified towns and to ports, harbours, and mouths of rivers, which, according to the principles and practice of all civilized nations, is only applicable to fortified places." On the part of the American government, I understand you to require that Great Britain should revoke her order of blockade of May, 1806. Combining your requisition with that of the French minister, I must conclude, that America demands the revocation of that order of blockade as a practical instance of our renunciation of those principles of blockade which are condemned by the French government. Those principles of blockade Great Britain has asserted to be ancient and established by the laws of maritime war, acknowledged by all civilized nations, and on which depend the most valuable rights and interests of this nation. If the Berlin and Milan decrees are to be considered as still in force, unless Great Britain

Blockade

shall renounce these established foundations of her maritime rights and interests, the period of time is not yet arrived, when the repeal of her orders in council can be claimed from her, either with reference to the promise of this government, or to the safety and honour of the nation. I trust that the justice of the American government will not consider, that France, by the repeal of her obnoxious decrees under such a condition, has placed the question in that state which can warrant America in enforcing the non-intercourse act against Great Britain and not against France. In reviewing the actual state of this question, America cannot fail to observe the situation in which the commerce of neutral nations has been placed by many recent acts of the French government; nor can America reasonably expect that the system of violence and injustice, now pursued by France with unremitting activity (while it serves to illustrate the true spirit of her intentions), should not require some precautions of defence on the part of Great Britain.

Having thus stated my view of the several considerations, arising from the letter of the French minister, and from that with which you have honoured me; it remains only to express my solicitude that you should correct any interpretation of either which you may deem erroneous. If either by the terms of the original decree to which the French minister's letter refers, or by any other authentic document, you can prove that the decrees of Berlin and Milan are absolutely repealed, and that no further condition is required of Great Britain than the repeal of her orders in council, I shall receive any such information with most sincere satisfaction; desiring you to understand, that the British government retains an anxious solicitude to revoke the *orders in council*, as soon as the Berlin and Milan decrees shall be effectually repealed

without conditions injurious to the maritime rights and honour of the United Kingdom.

I have the honour to be,

With great respect and consideration,

Sir,

Your most obedient, and humble servant,

(Signed) WELLESLEY.

William Pinkney, esquire, &c.

Mr. Pinkney to Lord Wellesley.

GREAT CUMBERLAND PLACE,

January 14, 1811.

MY LORD,

I have received the letter which you did me the honour to address to me on the 29th of last month, and will not fail to transmit a copy of it to my government. In the mean time I take the liberty to trouble you with the following reply, which a severe indisposition has prevented me from preparing sooner.

The first paragraph seems to make it proper for me to begin by saying, that the topics introduced into my letter of the 10th of December were intimately connected with its principal subject, and fairly used to illustrate and explain it; and consequently that if they had not the good fortune to be acceptable to your lordship, the fault was not mine.

It was scarcely possible to speak with more moderation than my paper exhibits, of that portion of a long list of invasions of the rights of the United States, which it necessarily reviewed, and of the ap-

parent reluctance of the British government to forbear those invasions in future. I do not know that I could more carefully have abstained from whatever might tend to disturb the spirit which your lordship ascribes to his majesty's government, if, instead of being utterly barren and unproductive, it had occasionally been visible in some practical result, in some concession either to friendship or to justice. It would not have been very surprising, nor very culpable perhaps, if I had wholly forgotten to address myself to a spirit of conciliation, which had met the most equitable claims with steady and unceasing repulsion; which had yielded nothing that could be denied; and had answered complaints of injury by multiplying their causes. With this forgetfulness, however, I am not chargeable; for, against all the discouragements suggested by the past, I have acted still upon a presumption that the disposition to conciliate, so often professed, would finally be proved by some better evidence than a perseverance in oppressive novelties, as obviously incompatible with such a disposition in those who enforce them, as in those whose patience they continue to exercise.

Upon the commencement of the second paragraph I must observe, that the forbearance which it announces might have afforded some gratification, if it had been followed by such admissions as my government is entitled to expect, instead of a further manifestation of that disregard of its demands, by which it has so long been wearied. It has never been my practice to seek discussions, of which the tendency is merely to irritate; but I beg your lordship to be assured, that I feel no desire to avoid them, whatever may be their tendency, when the rights of my country require to be vindicated against pretensions that deny, and conduct that infringes them.

If I comprehend the other parts of your lordship's letter, they declare in effect, that the British govern-

ment will repeal nothing but the *orders in council*, and that it cannot at present repeal even them; because in the first place, the French government has required, in the letter of the duke of Cadore to general Armstrong, of the 5th of August, not only that Great Britain shall revoke those orders, but that she shall renounce certain principles of blockade (supposed to be explained in the preamble to the Berlin decree) which France alleges to be new; and, in the second place, because the American government has (as you conclude) demanded the revocation of the British order of blockade of May, 1806, as a *practical instance of that same renunciation*, or, in other words, has made itself a party, not openly indeed, but indirectly and covertly, to the entire requisition of France, as you understand that requisition.

It is certainly true that the American government has required, as indispensable in the view of its acts of intercourse and non-intercourse, the annulment of the British blockade of May 1806; and further, that it has through me declared its confident expectation that other blockades of a similar character (including that of the island of Zealand) will be discontinued. But by what process of reasoning your lordship has arrived at the conclusion, that the government of the United States intended by this requisition to become the champion of the edict of Berlin, to fashion its principles by those of France while it affected to adhere to its own, and to act upon some partnership in doctrines, which it would fain induce you to acknowledge, but could not prevail upon itself to avow, I am not able to conjecture. The frank and honourable character of the American government justifies me in saying, that if it had meant to demand of Great Britain an abjuration of all such principles as the French government may think fit to disapprove, it would not have put your lordship to the trouble of discovering that meaning by the aid of combinations

and inferences discountenanced by the language of its minister, but would have told you so in explicit terms. What I have to request of your lordship, therefore, is, that you will take our views and principles from our own mouths, and that neither the Berlin decree, nor any other act of any foreign state, may be made to speak for us what we have not spoken for ourselves.

The principles of blockade which the American government professes, and upon the foundation of which it has repeatedly protested against the order of May, 1806, and the other kindred innovations of those extraordinary times, have already been so clearly explained to your lordship, in my letter of the 21st of September, that it is hardly possible to read that letter and misunderstand them. Recommended by the plainest considerations of universal equity, you will find them supported with a strength of argument and a weight of authority, of which they scarcely stand in need, in the papers which will accompany this letter, or were transmitted in that of September. I will not recapitulate what I cannot improve; but I must avail myself of this opportunity to call your lordship's attention a second time, in a particular manner, to one of the papers to which my letter of September refers. I allude to the copy of an official note of the 12th of April, 1804, from Mr. Merry to Mr. Madison, respecting a pretended blockade of Martinique and Guadaloupe. No comment can add to the value of that manly and perspicuous exposition of the law of blockade, as made by England herself in maintenance of rules which have been respected and upheld in all seasons and on all occasions by the government of the United States. I will leave it, therefore, to your lordship's consideration, with only this remark, that, while that paper exists, it will be superfluous to seek in any *French* document for the

opinions of the American government on the matter of it.

The steady fidelity of the government of the United States to its opinions on that interesting subject is known to every body. The same principles which are found in the letter of Mr. Madison to Mr. Thornton, of the 21th of October, 1803, already before you, were asserted in 1799, by the American minister at this court, in his correspondence with lord Grenville, respecting the blockade of some of the ports of Holland; were sanctioned in a letter of the 20th of September, 1800, from the secretary of state of the United States to Mr. King, of which an extract is enclosed; were insisted upon in repeated instructions to Mr. Monroe and the special mission of 1806; have been maintained by the United States against others as well as against England, as will appear by the enclosed copy of instructions, dated the 21st of October, 1801, from Mr. secretary Madison to Mr. Charles Pinkney, then American minister at Madrid; and finally, were adhered to by the United States, when belligerent, in the case of the blockade of Tripoli.

A few words will give a summary of those principles; and when recalled to your remembrance, I am not without hopes, that the strong grounds of law and right, on which they stand, will be as apparent to your lordship as they are to me.

It is by no means clear that it may not fairly be contended, on principle and early usage, that a maritime blockade is incomplete with regard to states at peace, unless the place which it would affect is invested by land as well as by sea. The United States, however, have called for the recognition of no such rule. They appear to have contented themselves with urging in substance, that ports not actually blockaded by a present, adequate, stationary force, employed by the power which attacks them, shall

not be considered as shut to neutral trade in articles not contraband of war; that, though it is usual for a belligerent to give notice to neutral nations when he intends to institute a blockade, it is possible that he may not act upon his intention at all, or that he may execute it insufficiently, or that he may discontinue his blockade, of which it is not customary to give any notice; that consequently the presence of the blockading force, is the natural criterion by which the neutral is enabled to ascertain the existence of the blockade at any given period, in like manner as the actual investment of a besieged place, is the evidence by which we decide whether the siege, which may be commenced, raised, re-commenced and raised again, is continued or not; that of course a mere notification to a neutral minister shall not be relied upon, as affecting, with knowledge of the actual existence of a blockade, either his government or its citizens; that a vessel cleared or bound to a blockaded port, shall not be considered as violating in any manner the blockade, unless, on her approach towards such port, she shall have been previously warned not to enter it; that this view of the law, in itself perfectly correct, is peculiarly important to nations situated at a great distance from the belligerent parties, and therefore incapable of obtaining other than tardy information of the actual state of their ports; that whole coasts and countries shall not be declared, (for they can never be more than *declared*) to be in a state of blockade, and thus the right of blockade converted into the means of extinguishing the trade of neutral nations; and lastly, that every blockade shall be impartial in its operation, or, in other words, shall not open and shut for the convenience of the party that institutes it, and at the same time repel the commerce of the rest of the world, so as to become the odious instrument of an unjust monopoly, instead of a measure of honourable war.

These principles are too moderate and just to furnish any motive to the British government for hesitating to revoke its orders in council, and those analogous orders of blockade, which the United States expect to be recalled.' It can hardly be doubted that Great Britain will ultimately accede to them in their fullest extent; but if that be a sanguine calculation (as I trust it is not) it is still incontrovertible that a disinclination at this moment to acknowledge them, can suggest no rational inducement for declining to repeal at once what *every* principle disowns, and what must be repealed at last.

With regard to the rules of blockades which the French government expects you to abandon, I do not take upon me to decide whether they are such as your lordship supposes them to be or not. Your view of them may be correct; but it may also be erroneous; and it is wholly immaterial to the case between the United States and Great Britain whether it be the one or the other.

As to such *British blockades* as the United States desire you to relinquish, you will not, I am sure, allege that it is any reason for adhering to *them* that *France* expects you to relinquish *others*. If our demands are suited to the measure of our own rights, and of your obligations as they respect those rights, you cannot think of founding a rejection of them upon any imputed exorbitance in the theories of the French government, for which we are not responsible, and with which we have no concern. If, when you have done justice to the United States, your enemy should call upon you to go farther, what shall prevent you from refusing? Your free agency will in no respect have been impaired. Your case will be better in truth, and in the opinion of mankind; and you will be, *therefore*, stronger in maintaining it, provided that, in doing so, you resort only to legitimate means,

and do not *once more* forget the rights of others while you seek to vindicate your own.

Whether France will be satisfied with what you may do, is not to be known by anticipation, and ought not to be a subject of inquiry. So vague a speculation has nothing to do with your duties to nations at peace, and, if it had, would annihilate them. It cannot serve your interests; for it tends to lessen the number of your friends, without adding to your security against your enemies.

You are required, therefore, to do right, and to leave the consequences to the future, when by doing right you have every thing to gain and nothing to lose.

As to the *orders in council*, which professed to be a reluctant departure from all ordinary rules, and to be justified only as a system of retaliation for a pre-existing measure of France, their foundation (such as it was) is gone the moment that measure is no longer in operation. But the Berlin decree is repealed; and even the *Milan* decree, the successor of your orders in council, is repealed also. Why is it, then, that your orders have outlived those edicts, and that they are still to oppress and harass as before? Your lordship answers this question explicitly enough, but not satisfactorily. You do not allege that the French decrees are not repealed; but you imagine that the repeal is not to remain in force, unless the British government shall, in addition to the revocation of its orders in council, abandon its system of blockade. I am not conscious of having stated, as your lordship seems to think, that this is so, and I believe in fact that it is otherwise. Even if it were admitted, however, the orders in council ought nevertheless to be revoked. Can "the safety and honour of the British nation" demand that these orders shall continue to outrage the public law of the world, and sport with the undisputed rights of neutral commerce, after the pretext which

was at first invented for them is gone? But you are menaced with a *revival* of the French system, and consequently may again be furnished with the same *pretext*! Be it so; yet still, as the system and the pretext are *at present* at an end, so, of course, should be your orders.

According to your mode of reasoning, the situation of neutral trade is hopeless indeed. Whether the Berlin decree exists or not, it is equally to justify your orders in council. You issued them before it was any thing but a shadow, and by doing so gave to it all the substance it could ever claim. It is at this moment nothing. It is revoked and has passed away, according to your own admission. You choose, however, to look for its re-appearance; and you make your own expectation equivalent to the decree itself. Compelled to concede that there is no anti-neutral French edict in operation upon the ocean, you think it sufficient to say that there *will be* such an edict, you know not when; and in the mean time you do all you can to verify your own prediction, by giving to your enemy all the provocation in your power to resume the decrees which he has abandoned.

For my part, my lord, I know not what it is that the British government requires, with a view to what it calls its *safety* and its *honour*, as an inducement to rescind its orders in council. It does not, I presume, imagine that such a system will be suffered to ripen into law. It must intend to relinquish it, sooner or later, as one of those violent experiments for which time can do nothing, and to which submission will be hoped in vain. Yet, even after the professed foundation of this mischievous system is taken away, another and another is industriously procured for it; so that no man can tell at what time, or under what circumstances it is likely to have an end. When realities cannot be found, possibilities supply their place, and that, which was originally said to be retaliation for

actual injury, becomes at last (if such a solecism can be endured or imagined) retaliation for *apprehended* injuries, which the future may or may not produce, but which it is certain have no existence *now*!

I do not mean to grant, for I do not think, that the edict of Berlin did at any time lend even a colour of equity to the British orders in council, with reference to the United States; but it might reasonably have been expected that they, who have so much relied upon it as a justification, would have suffered it and them to sink together. How this is forbidden by your *safety* or your *honour*, remains to be explained; and I am not willing to believe that either the one or the other is inconsistent with the observance of substantial justice, and with the prosperity and rights of peaceful states.

Although your lordship has slightly remarked upon certain recent acts of the French government, and has spoken in general terms of "the system of violence and injustice now pursued by France," as requiring "some precautions of defence on the part of Great Britain," I do not perceive that you deduce any consequence from these observations, in favour of a perseverance in the orders in council. I am not myself aware of any edicts of France which, now that the Berlin and Milan decrees are repealed, affect the rights of neutral commerce on the seas. And you will yourselves admit that if any of the acts of the French government, resting on territorial sovereignty, have injured, or shall hereafter injure, the United States, it is for them, and for them only, to seek redress. In like manner it is for Great Britain to determine what precautions of defence those measures of France, which you denominate unjust and violent, may render it expedient for her to adopt. The United States have only to insist that a sacrifice of their rights shall not be among the number of those precautions.

In replying to that passage in your letter, which adverts to the American act of non-intercourse, it is only necessary to mention the proclamation of the president of the United States, of the 2d of November last, and the act of congress which my letter of the 21st of September communicated, and to add that it is in the power of the British government to prevent the non-intercourse from being enforced against Great Britain.

Upon the concluding paragraph of your letter I will barely observe, that I am not in possession of any document, which you are likely to consider as *authentic*, shewing that the French decrees are "absolutely revoked upon the single condition of the revocation of the British orders in council;" but that the information, which I have lately received from the American legation at Paris, confirms what I have already stated, and I think proved to your lordship, that those decrees are repealed and have ceased to have any effect. I will now trespass on you no farther than to suggest that it would have given me sincere pleasure to be enabled to say as much of the British orders in council and of the blockades, from which it is impossible to distinguish them.

I have the honour to be,

With great respect and consideration,

My lord,

Your lordship's most obedient humble servant,

(Signed)

WM. PINKNEY.

The most noble
the Marquis Wellesley.

Mr. Pinkney to Lord Wellesley.

GREAT CUMBERLAND PLACE,

January 14, 1811.

MY LORD,

After a lapse of many months since I had the honour to receive and convey to my government your lordship's repeated assurances, written as well as verbal, (which you declined, however, to put into an official form) "that it was your intention *immediately* to recommend the appointment of a minister plenipotentiary from the king to the United States," the British government continues to be represented at Washington by a *chargé d'affaires*; and no steps whatever appear to have been taken to fulfil the expectation which the above-mentioned assurances produced and justified.

In this state of things, it has become my duty to inform your lordship, in compliance with my instructions, that the government of the United States cannot continue to be represented here by a minister plenipotentiary.

As soon, therefore, as the situation of the king's government will permit, I shall wish to take my leave, and return to America in the United States frigate *Essex*, now at Plymouth, having first named, as I am specially authorized to do, a fit person to take charge of the affairs of the American legation in this country.

I have the honour to be,

With great respect and consideration,

My lord,

Your lordship's most ob't humble ser't,

(Signed)

WM. PINKNEY.

The most noble the marquis Wellesley, &c.

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Mr. Pinkney to Lord Wellesley.

GREAT CUMBERLAND PLACE,

January 15, 1811.

MY LORD,

I have the honour to inform you, that it has been represented to me, that two American vessels (the schooner Polly and the schooner Mary), laden with cod fish, and bound from Marblehead to Bordeaux, in France, have, since the 1st instant, been captured and brought into Plymouth as prize, for an imputed breach of the British orders in council.

It is my duty to demand the restoration of these vessels and their cargoes to the American owners, together with compensation for their unjust detention, and liberty to resume the voyages which that detention has interrupted.

I have the honour to be, &c.

(Signed)

WM. PINKNEY,

The most noble the marquis Wellesley, &c.

Extract of a letter from Mr. Pinkney, to the Secretary of State of the United States.

LONDON, February 12, 1811.

"I received, a few hours since, a letter from Lord Wellesley (of which a copy is enclosed) in answer to mine of the 14th ultimo, respecting the British orders in council and blockades."

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Lord Wellesley to Mr. Pinkney.

FOREIGN OFFICE,

February 11, 1811.

SIR,

The letter which I had the honour to receive from you, under date the 14th of January, 1811, has been submitted to his royal highness the prince regent.

In communicating to you the orders which I have received from his royal highness on the subject of your letter, I am commanded to abstain from any course of argument, and from any expression which (however justified by the general tenor of your observations) might tend to interrupt the good understanding, which it is the wish of his royal highness, on behalf of his majesty, to maintain with the government of the United States.

No statement contained in your letter appears to affect the general principles, which I had the honour to communicate to you in my letter of the 29th of December, 1810.

Great Britain has always insisted upon her right of self-defence against the system of commercial warfare pursued by France, and the British orders of council were founded upon a just principle of retaliation against the French decrees. The incidental operation of the orders of council upon the commerce of the United States (although deeply to be lamented) must be ascribed exclusively to the violence and injustice of the enemy, which compelled this country to resort to adequate means of defence. It cannot now be admitted that the foundation of the original question should be changed, and that the measure of retaliation adopted against France should now be relinquished, at the desire of the United States, without any reference to the actual conduct of the enemy.

The intention has been repeatedly declared of repealing the orders of council, whenever France shall actually have revoked the decrees of Berlin and Milan, and shall have restored the trade of neutral nations to the condition in which it stood previously to the promulgation of those decrees. Even admitting that France has suspended the operation of those decrees, or has repealed them with reference to the United States, it is evident that she has not relinquished the conditions expressly declared in the letter of the French minister, under date of the 5th of August, 1810. France, therefore, requires that Great Britain shall not only repeal the orders of council, but renounce those principles of blockade which are alleged in the same letter to be new; an allegation which must be understood to refer to the introductory part of the Berlin decree. If Great Britain shall not submit to these terms, it is plainly intimated in the same letter that France requires America to enforce them.

To these conditions, his royal highness, on behalf of his majesty, cannot accede. No principles of blockade have been promulgated or acted upon by Great-Britain previously to the Berlin decree, which are not strictly conformable to the rights of civilized war, and to the approved usages and law of nations. The blockades established by the orders of council rest on separate grounds, and are justified by the principles of necessary retaliation in which they originated.

The conditions exacted by France, would require Great-Britain to surrender to the enemy the most important maritime rights and interests of the united kingdoms.

I am commanded to inform you, that his royal highness cannot consent to blend the question which has arisen upon the orders of council, with any discussion of the general principles of blockade.

This declaration does not preclude any amicable discussion upon the subject of any particular blockade, of which the circumstances may appear to the government of the United States to be exceptionable, or to require explanation.

I have the honour to be,

With great respect and consideration,

Sir,

Your most faithful and humble servant,

(Signed) WELLESLEY.

William Pinkney, esq. &c. &c. &c.

Mr. Pinkney to Lord Wellesley.

LONDON, February 13, 1811.

MY LORD,

I have had the honour to receive your letter of the 11th instant, and will transmit a copy of it to my government. I can have no inducement to trouble your lordship any farther upon the subject to which it relates.

I have the honour, &c. &c.

WM. PINKNEY.

The most noble the marquis Wellesley.

Lord Wellesley to Mr. Pinkney.

The marquis Wellesley has the honour to inform Mr. Pinkney, that his royal highness the prince regent will receive the foreign ministers at his levee at Carlton-house, on Tuesday next, the 19th instant, at two o'clock.

Foreign Office, February 12, 1811.

Mr. Pinkney to Lord Wellesley.

GREAT CUMBERLAND PLACE,

February 13, 1811.

MY LORD,

Referring to my letter of the 14th of last month, I beg to be informed by your lordship, at what time his royal highness the prince regent will do me the honour to give me audience of leave.

I have the honour to be,

With great respect and consideration,

My lord,

Your lordship's most ob't humble ser't,

(Signed)

WM. PINKNEY.

Mr. Pinkney to Mr. Smith.

LONDON, February 16, 1811.

SIR,

I received at a very late hour last night two notes (bearing date "February 15, 1811") of which copies, marked No. 1, and No. 2, are inclosed.

Taken together (as of course they must be), they announce the appointment of Mr. Foster as envoy extraordinary and minister plenipotentiary to the United States, and set forth the reasons why an appointment has been so long delayed.

You will perceive, in the second and third paragraphs of the unofficial paper, a distinct disavowal of the offensive views which the appointment of a mere *chargé d'affaires* and other circumstances appeared originally to indicate. We are now told, in writing, that the delay in appointing a minister plenipotentiary was occasioned, *in the first instance*, not by such considerations as have been supposed, but "by an earnest desire of rendering the appointment satisfactory to the United States; and conducive to the effectual establishment of harmony between the two governments;" that more recently "the state of his majesty's government rendered it impossible to make the intended appointment;" and that lord Wellesley was therefore "concerned to find, by my letter of the 14th January, that the government of the United States should be induced to suppose that any indisposition could exist, on the part of his majesty's government, to place the British mission in America on the footing most acceptable to the United States, as soon as might be practicable, consistently with the convenience of affairs in this country."

The two papers are evidently calculated to prevent me from acting upon my late request of an audience of leave; and they certainly put it in my power, if they do not make it my duty, to forbear to act upon it. I have it under consideration, (looking to the instructions contained in your letter of the 15th of November,) what course I ought to pursue. It is at any rate my intention to return to America in the Essex, as I shall doubtless have the president's permission in due season to do, in consequence of my letter to you of the 24th of November.

I have the honour to be,

With great respect and consideration,

Sir,

Your most obedient humble servant.

WM. PINKNEY.

Robert Smith, esquire, &c.

Lord Wellesley to Mr. Pinkney.

[Marked "private."]

FOREIGN OFFICE,

February 15, 1811.

SIR,

In the various unofficial communications which I have had the honour to make to you, respecting the appointment of a minister plenipotentiary from the king to the United States, I have endeavoured to explain to you, in the most distinct manner, the circumstances which had delayed that appointment; and I have expressed my intention to recommend that it should be carried into effect as soon as the situation of his majesty's government might permit.

The delay was occasioned, in the first instance (as I stated to you repeatedly), by an earnest desire of rendering the appointment satisfactory to the United States, and conducive to the effectual establishment of harmony between the two governments. Since that period of time the state of his majesty's government rendered it impossible to make the intended appointment.

I was therefore concerned to find, by your letter of the 14th of January, that the government of the United States should be induced to suppose that any indisposition could exist, on the part of his majesty's government, to place the British mission in America on the footing most acceptable to the United States, as soon as might be practicable, consistently with the convenience of affairs in this country.

In pursuance of the intention, so often declared to you, his royal highness the prince regent has been pleased, in the name and on behalf of his majesty, to appoint Mr. Foster, (lately charged with his majesty's

affairs in Sweden) to be his majesty's envoy extraordinary and minister plenipotentiary to the United States; and that appointment will be notified in the next gazette.

You will, of course, exercise your own judgment, under these circumstances, respecting the propriety of requiring an audience of leave, on the grounds which you have stated.

I have the honour to be,

With great respect and consideration,

Sir,

Your most obedient and humble servant,

(Signed)

WELLESLEY.

No. 2.

Lord Wellesley to Mr. Pinkney.

FOREIGN OFFICE,

February 15, 1811.

SIR,

Having submitted to his royal highness the prince regent your desire to have an audience of leave, with a view to your return to America, I am commanded by his royal highness to inform you, that he will be prepared to receive you, at Carlton-house, on Tuesday the 19th instant.

At the same time, I am commanded to inform you, that his royal highness, in the name and on the behalf of his majesty, has been pleased to appoint Augustus Foster, esquire, (lately charged with his majesty's affairs in Sweden) to be his majesty's envoy extraordinary and minister plenipotentiary to the United States.

I have the honour to be, Sir,

With great respect and consideration,

Your most faithful and humble servant,

(Signed)

WELLESLEY.

Mr. Pinkney to Mr. Smith, Secretary of State.

LONDON, February 18, 1811.

SIR,

The result of my reflections on lord Wellesley's two communications of the 15th instant, will be found in my letter to him of yesterday's date, of which I now transmit a copy.

It appeared to me that the appointment of a minister plenipotentiary to the United States was nothing, or rather worse than nothing; if the orders in council were to remain in force; the blockade of May, 1806, to be unrepealed; the affair of the Chesapeake to continue at large, and the other urgent questions between us to remain unsettled.

The "posture of our relations," as you have expressed it in your letter of the 15th of November, would not be "satisfactorily changed" merely by such an appointment; and of course my functions could not be resumed upon the sole foundation of it.

I have put it to lord Wellesley to say explicitly, whether full and satisfactory arrangement is intended, before I answer his official letter concerning my audience of leave.

If he is prepared to do at once what we require, or to instruct the new minister to do at Washington what does not demand immediate interference here, I shall think it my duty to forbear to take my leave on the 26th. If he declines a frank reply, or refuses our demands, I shall press for my audience and put an end to my mission.

I have the honour, &c.

(Signed)

WM. PINKNEY.

The Secretary of State of the U. S.

Mr. Pinkney to Lord Wellesley.

GREAT CUMBERLAND PLACE,

February 17th, 1811.

MY LORD,

Before I reply to your official communication of the 15th instant, you will perhaps allow me, in acknowledging the receipt of the unofficial paper which accompanied it, to trouble you with a few words.

From the appointment which you have done me the honour to announce to me, of a minister plenipotentiary to the United States, as well as from the language of your private letter, I conclude that it is the intention of the British government to seek immediately those adjustments with America, without which, that appointment can produce no beneficial effect. I presume, that, for the restoration of harmony between the two countries, the orders in council will be relinquished without delay; that the blockade of May 1806 will be annulled; that the case of the Chesapeake will be arranged in the manner heretofore intended, and, in general, that all such just and reasonable acts will be done as are necessary to make us friends.

My motives will not, I am sure, be misinterpreted, if, anxious to be enabled so to regulate my conduct in the execution of my instructions as that the best results may be accomplished, I take the liberty to request such explanations on these heads as your lordship may think fit to give me.

I ought to add, that, as the levee of his royal highness the prince regent has been postponed until Tuesday the 26th instant, I have supposed that my audience of leave is postponed to the same day; and that I have, on that ground, undertaken to delay my reply.

to your official communication until I receive an answer to this letter.

I have the honour to be,

With great respect and consideration,

My lord,

Your lordship's most obedient humble servant,

(Signed)

WM. PINKNEY.

The most noble

the marquis Wellesley.

Mr. Pinkney to Mr. Smith.

LONDON, 24th February, 1811.

SIR,

I received last night Lord Wellesley's answer (of which a copy is enclosed) to my letter of the 17th instant. He has marked it *private*, and speaks of my letter to him as being private also. My letter, however, was not so marked or intended; and his answer, however marked, is essentially an official communication of great importance.

His letter amounts to an explicit declaration that the orders in council are to be persisted in; and it furnishes no evidence of a disposition to give us any thing but vague and general professions on any subject. I did not, therefore, hesitate to send him a reply, declaring my intention to take leave on Thursday the 28th, in pursuance of my request of the 13th, and declining to attend the prince's levee on Tuesday the 26th. Of this reply a copy is now transmitted.

To mistake the views of this government, is now impossible. They are such as I always believed them to be, and will, I hope, be resisted with spirit and firmness.

In shaping my course on this occasion, I have endeavoured to conform to the orders of the president, signified to me in your letter of the 15th of November. With those orders, as I understand them, my own wishes certainly concurred; but I trust that I have not suffered inclination to influence my interpretation of them.

According to your letter, my functions were to be considered as suspended on the receipt of it, if the British government had not *then* appointed a minister plenipotentiary to the United States. Such an appointment had not at that time been made, and consequently the suspension took place. Upon a careful consideration of your letter, it appeared to me to look to a REVIVAL of my functions, in the event of "a satisfactory change in the posture of our relations" with this country. I could not indeed find in it any precise provision to that effect; but there was apparently room for such a construction; and I have already informed you, that, however anxious to close my mission and retire from the public service, I was disposed to act, for a few weeks, upon that implication, in case such a change occurred in our relations as I deemed a *satisfactory* one. It could not be imagined that the appointment of Mr. Foster produced that change; and, supposing it to be left, in some degree at least, to my discretion to determine in what it should consist, I had no difficulty in deciding that the immediate repeal of the orders in council and the blockade of May 1806, a distinct pledge on the affair of the Chesapeake, and a manifestation of a disposition to accommodate with us, upon principles of justice, on all other concerns, were indispensable ingredients. It followed, that, upon receiving lord Wellesley's letter of yesterday's date, I had no choice but to press for my audience of leave.

It may perhaps be thought that I ought not to have refused to appear at Carlton-House on the 26th, for

the purpose of being presented, with the other foreign ministers, to the regent. I have not, myself, any doubt at all upon that point. My appearance at the levee for such a purpose would import that I consider my capacity as the minister of the United States to be entire, and would, moreover, encourage the delusion which now prevails concerning the views of the British government towards America.

I have the honour to be,

With great respect and consideration,

Sir,

Your most obedient humble servant,

(Signed)

WM. PINKNEY,

Robert Smith, esq. &c. &c.

Lord Wellesley to Mr. Pinkney.

[Marked "private."]

APSLEY HOUSE,

February 23, 1811.

SIR,

I have the honour to acknowledge the receipt of your private* letter, under date the 17th instant.

I take the liberty of referring you to my former unofficial letters and communications for an explanation of the motives which have induced this government, in pursuance of those amicable views which I have uniformly declared, to appoint a minister plenipotentiary to the United States.

I have already assured you that the delay of that appointment was occasioned, in the first instance, by an anxious desire to make it in the manner which was likely to prove most acceptable to the United States.

* N.B. This is a mistake. Mr. Pinkney's letter was not marked *private*, nor intended to be so.

WM. PINKNEY.

The appointment was recently delayed by the state of his majesty's government; and it has ultimately taken place in pursuance of the principles which I have repeatedly stated to you, and not in consequence of any change of system. It is perhaps unnecessary to repeat the desire of this government to relinquish the orders in council, whenever that measure can be adopted without involving the necessity of surrendering the most important and valuable maritime rights and interests of the united kingdom. No objection has ever been stated, on the part of this government, to an amicable discussion of the principles of any blockade, which may be deemed exceptionable by the United States. I have expressed to you, without reserve, a desire to arrange the case of the Chesapeake on just and equitable principles; and I trust that no apprehension can be entertained of the general disposition of this government to adopt every reasonable measure, which may be necessary to conciliate the friendship of the United States. But it would be neither candid towards you, nor just towards this government, to countenance any interpretation of the motives of the late appointment, which might favour a supposition that it was intended by this government to relinquish any of the principles which I have so often endeavoured to explain to you.

His royal highness's levee will take place on Tuesday the 26th instant; but I have received his commands to signify to such of the foreign ministers as may desire to have private audiences, that his royal highness will receive them on Thursday the 28th instant. The foreign ministers, however, will all be presented to his royal highness on Tuesday the 26th instant; on which day I shall attend for that purpose.

I have the honour to be, with great respect and consideration, sir, your most obedient humble servant,

(Signed)

WELLESLEY.

Mr. Pinkney to Lord Wellesley.

GREAT CUMBERLAND PLACE,

February 23, 1811.

MY LORD,

I have had the honour to receive your private letter of this day's date.

It only remains for me to inform your lordship, that I have transmitted to the secretary of state of the United States, a copy of your official communication of the 15th instant, and of the unofficial paper which accompanied it; and that I will avail myself of the disposition of his royal highness the prince regent, to give me an audience of leave on Thursday next the 28th of February, in pursuance of the request contained in my letter of the 13th instant, which referred to my letter of the 14th of January.

I take the liberty to add that, until the time appointed for my audience, I will not trespass on his royal highness, for the purpose of being presented to him.

I have the honour to be, with great respect and consideration, my lord, your lordship's most obedient humble servant,

(Signed)

WM. PINKNEY.

The most noble
the marquis Wellesley.

Extract of a letter from Mr. Pinkney to Mr. Smith, Secretary of State; dated

LONDON, March 1, 1811.

"I had my audience of leave at Carlton-House yesterday.

"In the course of the short address which the occasion required, I stated to the prince regent the

grounds upon which it had become my duty to take my leave, and to commit the business of the legation to a *chargé d'affaires*; and I concluded by expressing my regret that my humble efforts, in the execution of the instructions of my government, to set to rights the embarrassed and disjointed relations of the two countries, had wholly failed, and that I saw no reason to expect that the great work of their reconciliation was likely to be accomplished through any other agency.

The prince's reply was of course general; but I ought to say that (exclusively of phrases of courtesy) it contained explicit declarations of the most amicable views and feelings towards the United States. Lord Wellesley was the only person present at this audience.

While I was in the outer room, waiting until the prince regent was ready to receive me, lord Wellesley told me that they intended to send out Mr. Foster immediately."

Extract of a letter from M. Pinkney to the Secretary of State of the United States.

COWES, May 7, 1811.

"I inclose duplicate copies (more legible than those transmitted in my letter of the 13th of March) of Mr. Russell's communications to me of the 1st, 11th, 13th and 30th of December last. They are necessary to account for, not the general character or substance of my late correspondence with lord Wellesley, but that particular part of the last paragraph of my letter to that nobleman, of the 14th of January, 1811, which is contained in the following words: "the information which I have lately received from the American legation at Paris, confirms what I have

already stated, and I think proved to your lordship, that those decrees are repealed, and have ceased to have any effect."

I have the honour, &c.

WM. PINKNEY.

The hon. R. Smith, &c.

Mr. Russell to Mr. Pinkney.

PARIS, December 1, 1810.

SIR,

As nothing has transpired here of sufficient importance to be communicated by a special messenger; and as no safe private conveyance has hitherto presented itself till now, to acknowledge the receipt of your letters under dates of the 7th and 28th of October; no event within my knowledge has occurred, either before or since the 1st of November, to vary the construction given by us to the very positive and precise assurances of the duke of Cadore on the 5th of August, relative to the revocation of the Berlin and Milan decrees. That these decrees have not been executed for an entire month on any vessel arriving during that time in any of the ports of France, may, when connected with the terms in which their revocation was announced, fortify the presumption that they have ceased to operate. I know of no better evidence than this, which the negative character of the case admits; or how the non-existence of an edict can be proved, except by the promulgation of its repeal, and its subsequent non-execution.

Our attention here is now turned towards England and the United States. The performance of one of the conditions on which the revocation of the decrees was predicated, and which is essential to render it perma-

nent, is anxiously expected. And it is devoutly to be wished that England, by evincing the sincerity of her former professions, may save the United States from the necessity of resorting to the measure which exclusively depends on them.

I need not suggest to you the importance of transmitting hither, as early as possible, any information of a decided character, which you may possess, relative to this subject; as an impatience is already betrayed here to learn that one or the other of the conditions has been performed.

I am, sir, with great respect,

Your faithful servant,

(Signed)

JONA. RUSSELL.

His excellency William Pinkney, &c.

Mr. Russell to Mr. Pinkney.

PARIS, 11th Dec. 1810.

SIR,

I have had the pleasure to receive your letter of the 22d ult. by Mr. Page, and I thank you most sincerely for the papers which accompanied it. It is no where more necessary than at Paris, to hear both sides of a question in order to give a near guess at the truth. The way in which the story is told on your side of the channel, will enable me to correct many errors which it contains as told here. The obligations you confer on me this way I shall endeavour to discharge in kind.

I wrote you a few days since by the way of Dieppe, and gave you the best statement of affairs here that the truth would warrant, in hopes that you might derive some advantage from it. I assure you I have felt disappointed, and grieved, at the conduct of the British ministry. If they distrusted the sincerity of their enemies with regard to the revocation of the decrees here,

still it would have been good policy to have appeared to believe them, and to have acted accordingly. By pursuing a different course, they have missed a golden opportunity of honourably repealing their offending orders, and, in so doing, to have proved at once their own sincerity and conciliated the good opinion of the United States. If the Essex frigate, which arrived on the 4th inst. at L'Orient in 28 days from Norfolk, has brought the president's proclamation in pursuance of the law of the first of May, the British ministry will be placed in an awkward situation. They will have to persevere in their orders, at the expence of their veracity and at the hazard of war with the United States, or to withdraw them under very equivocal circumstances, which will give to their conduct the appearance of being rather the result of necessity than the dictate of principle. That the frigate has brought this proclamation, there is good cause to suppose, from the time when she left the United States, being a few days subsequent to the period when the Berlin and Milan decrees were to cease to operate. If she has brought this proclamation, it will, without doubt, render absolute the revocation of those decrees, whatever uncertainty might have before attended it. There are probably, then, but a few days left in which the repeal of the British orders can appear to be the spontaneous act of the ministry; and I sincerely hope, that by properly improving this short period, they may do, with a good grace, what cannot be done afterwards in a way either to save their pride or deserve our friendship.

Agreeably to your request, I shall change the file of the *Journal de l'Empire*, which I intended for you, for that of the *Moniteur*.

I am, sir,

Very truly and respectfully,

Your obedient servant,

JONA. RUSSELL.

His excellency William Pinkney, &c.

Mr. Russell to Mr. Pinkney.

PARIS, December 27, 1810.

SIR,

I have received your letters of the 5th and 6th of this month, by Mr. Bowdoin and Mr. Wells.

The vessel you mention, the *Charles*, having on board a large quantity of turpentine, which is considered here as naval stores, will probably be condemned for carrying contraband of war to an enemy, without any reference to the Berlin and Milan decrees.

On the other hand, the American vessels which have been permitted to land their outward cargoes in the ports of France, and take in return cargoes to the United States, are, as far as I can learn, but two in number, and in fact arrived before the first of November, and to them the decrees were not applicable. The other vessels which have taken away cargoes, arrived here in ballast, and were recommended by special circumstances to the consideration of this government.

Nothing can therefore be inferred either for or against the revocation of the French edicts, from the facts referred to in your letter of the 6th inst.

Since I last wrote, however, I have learnt the seizure and capture of two or three American vessels; but the course which this government will pursue in relation to them, being marked out by the letters of the minister of justice to the president of the council of prizes, and from the minister of finance to the director general of the customs, which you will find in the *Moniteurs* which I herewith send to you, it is unnecessary to enter into a particular detail of the circumstances which attended these cases.

I am willing to believe that what this government has done, although it may not be entirely satisfactory to the United States, will at least be sufficient to pro-

cure from the British government a repeal of the orders in council, and the restoration of all American property taken under them since the first of November.

It is possible that the French cruisers may hereafter continue their depredations; but abuses of this kind are very distinct from the operation of the Berlin and Milan decrees, and cannot, by the most extravagant construction of the law of retortion, afford a pretext for the continuance of the British orders.

I am, Sir, &c. &c.

(Signed) JON. RUSSELL.

His excellency William Pinkney, &c.

Mr. Russell to Mr. Pinkney.

PARIS, December 30, 1810.

SIR,

A gentleman called on me last evening from the duke of Cadore, to inform me that the American schooner, the Grace Ann Greene, had been released.

This vessel arrived at Marseilles since the first of November, and was last from Gibraltar, where she had remained some time. As she came clearly within the Berlin and Milan decrees, her release may be considered as conclusive evidence of their revocation.

I am, sir, with very great respect,

Your very humble servant,

JON. RUSSELL.

His excellency William Pinkney, &c.

CORRESPONDENCE

OF

MR. JOHN SPEAR SMITH.

Extract of a letter from J. S. Smith, esquire, to the Secretary of State, dated

LONDON, May 25, 1811.

“ I had yesterday, for the first time, an interview with lord Wellesley, and presented to him the letters of introduction that Mr. Pinkney had given me, and he received me in the most polite manner.”

Mr. J. S. Smith to Marquis Wellesley.

LONDON, May 27, 1811.

MY LORD,

I have the honour to inform your lordship (from official information, this day received by me from Paris,) that all the American vessels which have voluntarily arrived in France since the first of November, have been admitted. This (if any additional evidence of the repeal of the Berlin and Milan decrees were wanting) will sufficiently establish the fact of their revocation, as most of the vessels now admitted, would otherwise have been subject to their operation.

I have the honour to be,

With the greatest respect,

Your lordship's

Most obedient and humble servant,

(Signed) J. S. SMITH,

The most noble the Marquis Wellesley, &c.

Extract of a letter from Mr. John S. Smith to the Secretary of State, dated

LONDON, 8th June, 1811.

“ Enclosed is the copy of a letter which I addressed to lord Wellesley on the 5th instant. I had delayed making this communication in the hope that I should do it at the interview which he had promised me, and which I again requested on the 3d instant. I did not consider it necessary to enter at length into a subject which has been so often and so ably discussed, and on which nothing has been left to add. I shall, however, enter into any explanations that may be necessary when I again see his lordship.”

Mr. J. S. Smith to Lord Wellesley.

BENTINCK-STREET,
5th June, 1811.

MY LORD,

I have the honour to communicate to your lordship the copy of an act passed during the last session of congress, which, though it renews certain parts of the non-intercourse law against this country, yet it carefully gives to the president the authority to repeal it “ when Great Britain shall so revoke or modify her edicts as that they shall cease to violate the neutral commerce of the United States.” In this, as well as in the other provisions of the act, his majesty’s government cannot fail to observe the invariable disposition of the United States to preserve harmony with Great Britain, and to re-establish that happy intercourse between the two nations, which it is so much the interest of both to cultivate ; and the president

confidently expects that his majesty will not hesitate to abandon a system, always urged to be merely retaliatory, now that its causes have ceased to exist.

I have the honour to inform your lordship, that the gentleman who will be the bearer of my dispatches to the United States, in the John Adams, will leave town on Friday evening, and that I shall be happy to forward by the same occasion any dispatches that your lordship may wish to send to the United States.

I have the honour to be, &c.

(Signed) J. S. SMITH.

The most noble the Marquis Wellesley.

Mr. Smith, Chargé d’Affaires at London to the Secretary of State of the United States.

LONDON, 6th June, 1811.

SIR,

I have the honour to enclose a report of the trial of the Fox and others.

The John Adams will leave Cowes this week ; the messenger goes down to-morrow evening.

I have the honour, &c. &c.

(Signed) J. S. SMITH.

The honourable
The Secretary of State, &c.

COURT OF ADMIRALTY.

Thursday, May 30th, 1811.

FOX AND OTHERS.

JUDGMENT.

SIR WILLIAM SCOTT—This was the case of an American vessel which was taken on the 15th of November, 1810, on a voyage from Boston to Cherbourg. It is contended on the part of the captors, that, under the order in council of the 26th April, 1809, this ship and cargo, being destined to a port of France, are liable to confiscation. On the part of the claimants it has been replied, that the ship and cargo are not confiscable under the orders in council; first, because these orders have in fact become extinct, being professedly founded upon measures which the enemy had retracted; and secondly, that if the orders in council are to be considered as existing, there are circumstances of equity in the present case, and in the others that follow, which ought to induce the court to hold them exonerated from the penal effect of these orders.

In the course of the discussion a question has been started, What would be the duty of the court under orders in council that were repugnant to the law of nations? It has been contended on one side, that the court would at all events be bound to enforce the orders in council: on the other, that the court would be bound to apply the rule of the law of nations applying to the particular case, in disregard of the orders in council. I have not observed, however, that these orders in council, in their retaliatory character, have been described in the argument as at all repugnant to the law of nations, however liable to be so described if merely original and abstract; and therefore

it is rather to correct possible misapprehension on the subject than from the sense of any obligation which the present discussion imposes upon me, that I observe that this court is bound to administer the law of nations to the subjects of other countries in the different relations in which they may be placed towards this country and its government. This is what other countries have a right to demand for their subjects, and to complain if they receive it not. This is its unwritten law, evidenced in the course of its decisions, and collected from the common usage of civilized states. At the same time it is strictly true, that by the constitution of this country, the king in council possesses legislative rights over this court, and has power to issue orders and instructions which it is bound to obey and enforce; and these constitute the written law of this court. These two propositions, that the court is bound to administer the law of nations, and that it is bound to enforce the king's orders in council, are not at all inconsistent with each other; because these orders and instructions are presumed to conform themselves, under the given circumstances, to the principles of its unwritten law. They are either directory applications of those principles to the cases indicated in them—cases which, with all the facts and circumstances belonging to them, and which constitute their legal character, could be but imperfectly known to the court itself; or they are positive regulations, consistent with those principles, applying to matters which require more exact and definite rules than those general principles are capable of furnishing.

The constitution of this court, relatively to the legislative power of the king in council, is analogous to that of the courts of common law relatively to that of the parliament of this kingdom. Those courts have their unwritten law, the approved principles of natural reason and justice—they have likewise the written or

statute law in acts of parliament, which are directory applications of the same principles to particular subjects, or positive regulations consistent with them, upon matters which would remain too much at large if they were left to the imperfect information which the courts could extract from mere general speculations. What would be the duty of the individuals who preside in those courts if required to enforce an act of parliament which contradicted those principles, is a question which I presume they would not entertain *a priori*, because they will not entertain *a priori* the supposition that any such will arise. In like manner this court will not let itself loose into speculations as to what would be its duty under such an emergency, because it cannot, without extreme indecency, presume that any such emergency will happen; and it is the less disposed to entertain them, because its own observation and experience attest the general conformity of such orders and instructions to its principles of unwritten law.—In the particular case of the orders and instructions which give rise to the present question, the court has not heard it at all maintained in argument, that as retaliatory orders they are not conformable to such principles—for retaliatory orders they are.—They are so declared in their own language, and in the uniform language of the government which has established them. I have no hesitation in saying, that they would cease to be just if they ceased to be retaliatory; and they would cease to be retaliatory, from the moment the enemy retracts in a sincere manner those measures of his which they were intended to retaliate.

The first question is, what is the proper evidence for this court to receive, under all the circumstances that belong to the case, in proof of the fact that he has made a *bona fide* retraction of those measures. Upon that point it appears to me that the proper evidence for the court to receive, is the declaration of the state it-

self, which issued these retaliatory orders, that it revokes them in consequence of such a change having taken place in the conduct of the enemy. When the state, in consequence of gross outrages upon the law of nations committed by its adversary, was compelled, by a necessity which it laments, to resort to measures which it otherwise condemns, it pledged itself to the revocation of those measures as soon as the necessity ceases. And till the state revokes them, this court is bound to presume that the necessity continues to exist; it cannot, without extreme indecency, suppose that they would continue a moment longer than the necessity which produced them, or that the notification that such measures were revoked, would be less public and formal than their first establishment. Their establishment was doubtless a great and signal departure from the ordinary administration of justice in the ordinary state of the exercise of public hostility, but was justified by that extraordinary deviation from the common exercise of hostility in the conduct of the enemy. It would not have been within the competency of the court itself to have applied originally such rules, because it was hardly possible for this court to possess that distinct and certain information of the facts to which alone such extraordinary rules were justly applicable. It waited therefore for the communication of the facts. It waited likewise for the promulgation of the rules that were to be practically applied. For the state might not have thought fit to act up to the extremity of its rights on this extraordinary occasion: It might, from motives of forbearance, or even of policy unmixed with any injustice to other states, have adopted a more indulgent rule than the law of nations would authorize, though it is not at liberty ever to apply a harsher rule than that law warrants. In the case of the Swedish convoy, which has been alluded to, no order or instruction whatever was issued, and the court therefore was left to find its way

to that legal conclusion which its judgment of the principles of the law led it to adopt. But certainly, if the state had issued an order that a rule of less severity should be applied, this court would not have considered it as any departure from its duty to act upon the milder rule, which the prudence of the state was content to substitute in support of its own rights. In the present case, it waited for the communication of the fact and the promulgation of the rule. It is its duty in like manner to wait for the notification of the fact that these orders are revoked in consequence of a change in the conduct of the enemy.

The edicts of the enemy themselves, obscure and ambiguous in their usual language, and most notoriously and frequently contradicted by his practice, would hardly afford it a satisfactory evidence of any such change having actually and sincerely taken place. This state has pledged itself to make such a notification when the fact happens: It is pledged so to do by its public declarations—by its acknowledged interpretations of the law of nations—by every act which can excite an universal expectation and demand, that it shall redeem such a pledge. Is such an expectation peculiar to this court? most unquestionably not. It is universally felt and universally expressed. What are the expectations signified by the American government, in the public correspondence referred to? not that these orders would become silently extinct under the interpretations of this court, but that the state would rescind and revoke them. What is the expectation expressed in the numerous private letters exhibited to the court amongst the papers found on board this class of vessels? not that the British orders had expired of themselves, but that they would be removed and repealed by public authority. If I took upon myself to annihilate them by interpretation, I should act in opposition to the apprehension and judgment of all parties concerned—of the individuals

whose property is in question, and of the American government itself, which is bound to protect them.

Allusion has been made to two or three cases, in which this court is said to have exercised a power of qualifying and moderating the general terms of an order in council, as in the case of the *Lucy, Taylor*, in which the general terms of the order subjected to confiscation all ships transferred by the enemy to neutrals during the war, and yet this court held that these general terms did not extend to prize ships so transferred by the enemy. But what was the ground of that interpretation? It was this: The rule itself was adopted from the rule of the enemy, and upon a principle of exact retaliation; for it was declared in the express terms of the preamble of the order, that it was *just to apply the same rule to the enemy which he was in the habit of applying to this country*. And when the court found, upon satisfactory evidence, that the enemy did not apply any such rule to prize ships, but specially exempted them, it would have pronounced in direct contradiction to the avowed principle of the order itself, if it had not followed the enemy in this acknowledged distinction. It has likewise been urged that cases may be found in which the court has presumed a revocation, though no such revocation has been promulged. And it is certainly true that where an essential change in the circumstances that occasioned the order has, in effect, extinguished its subject matter, and that change of circumstances has been publicly declared by the state, the court has not thought it necessary to wait for a formal revocation itself. In the case of the Baltic order, by which, in compliance with the wishes of its allies in the war, the government of this country granted an immunity from the molestation of capture in that sea; the court held that order to be revoked when the state had declared, that most of those states to whose applications, as allies, that indulgence had been granted, had changed

the character of allies for that of enemies. It was quite unnecessary to wait for such special revocation, when, by the general declaration of war, all hostilities had been authorized against them.

Admitting, however, that there may be cases of presumed revocation, does it follow that this is, with any propriety, to be considered as one of those cases? The novelty of these orders in council, the magnitude, the complexity, the extraordinary nature of the facts to which they owe their origin, the attention which they called for and excited both at home and abroad, the pledges given by this state and accepted by other states, all disqualify this court from taking upon itself to apply a presumed revocation in any such case.

Supposing, however, that the court felt itself at liberty to accept as satisfactory other evidence of a sincere retraction of the French decrees, what is the amount of the evidence offered? No edict, no public declaration of repeal, no reference to cases in which the courts of that country have acted upon any such revocation. The only case mentioned was that of the New Orleans Packet, and it was brought forward in such a way, so void of all authenticity, and of all accurate detail of particulars, as to make it hardly possible for me to allude to it with any propriety, and much less with any legal effect. What the circumstances of that case were, in what form, and under what authority, and on what account released, did not at all appear: whether at all applicable to the present question, whether a mere irregularity, or what was its real character, the court could not learn. This however is matter of notoriety, that these decrees are pronounced fundamental laws of the French empire; that they were declared so in their original formation, and that they have been since so declared repeatedly and recently, long since the date of the present transaction. The declaration of the person styling him-

self duke de Cadore imports no revocation; for that declaration imports only a conditional retraction, and this upon conditions known to be impossible to be complied with. It has been urged that the American government has considered it otherwise, and has so declared it for the regulation of the conduct of the people of that country. If such is the fact, it is not for me to lose sight of that respect which is due to the acts of a foreign government, so far as to question the propriety of any interpretation which they may have given to such an instrument. But when the effect of such an instrument is pressed upon me for the purpose of calling for my decision, I must be allowed to interpret it for myself, and to act upon that interpretation. And to me it appears, that the declaration, clogged as it is with stipulations known to be beyond the reach of all rational hope of any possible compliance, is in effect a renunciation of any serious purpose of repealing those decrees. I think I might invoke the authority of the government of the United States for denying to this French declaration the effect of an absolute repeal, when I observe that the period which they have allowed to the British government for revoking our orders in council extends to the 2d of February; an allowance which could hardly have been made if the revocation on the part of France had really taken place at the time to which that declaration purports to refer.

In the absence of any declaration of the British government to such an effect, there is a total failure of all other evidence, (if the court were at liberty to accept other evidence as satisfactory,) that the French decrees had been revoked. If I were driven to decide upon that evidence, independent of all evidence to be regularly furnished by the government under whose authority I sit, I think I am bound to pronounce that no such revocation has taken place, and therefore that the orders in council subsist in perfect justice as well as in complete authority.

It is incumbent upon me, I think, to take notice of an objection of Dr. Herbert's, to the existence of the orders in council, namely, that British subjects are, notwithstanding, permitted to trade with France, and that a blockade which excludes the subjects of all other countries from trading with ports of the enemy, and at the same time permits any access to those ports to the subjects of the state which imposes it, is irregular, illegal, and null. And I agree to the position, that a blockade, imposed for the purpose of obtaining a commercial monopoly for the private advantage of the state which lays on such blockade, is illegal and void on the very principle upon which it is founded. But, in the first place, (though that is matter of inferior consideration) I am not aware that any such trade between the subjects of this country and France is generally permitted. Licences have been granted certainly in no inconsiderable numbers; but it never has been argued that particular licences would vitiate a blockade. If it were material in the present case, it might be observed, that many more of these licences had been granted to foreign ships than to British ships, to go from this country to France and to return here from thence with cargoes. But, secondly, what still more clearly and generally takes this matter out of the reach of the objection, is the particular nature and character of this blockade of France, if it is so to be characterized. It is not an original, independent act of blockade, to be governed by the common rules that belong simply to that operation of war. It is in this instance a counteracting reflex measure, compelled by the act of the enemy, and as such subject to other considerations arising out of its peculiarly distinctive character. France declared that the subjects of other states should have no access to England; England, on that account, declared that the subjects of other states should have no access to France. So far this retaliatory blockade (if blockade it is to be

called) is co-extensive with the principle: neutrals are prohibited to trade with France, because they are prohibited by France from trading with England. England acquires the right, which it would not otherwise possess, to prohibit that intercourse, by virtue of the act of France. Having so acquired it, it exercises it to its full extent, with entire competence of legal authority; and having so done, it is not for other countries to inquire how far this country may be able to relieve itself further from the aggressions of that enemy. The case is settled between them and itself by the principle on which the intercourse is prohibited. If the convenience of this country before this prohibition required some occasional intercourse with the enemy, no justice that is due to other countries requires that such an intercourse should be suspended on account of any prohibition imposed upon them on a ground so totally unconnected with the ordinary principles of a common measure of blockade, from which it is thus distinguished by its retaliatory character.

The last question is, are there any circumstances addressed to equitable consideration, that can relieve the claimants from the penal effects of these orders? Certainly, if any could be urged that arose from the conduct of the British government itself, they might be urged with a powerful and even irresistible effect; but if they found themselves in the fraud of the enemy, or in the misapprehensions of the American government induced by the fraud of the enemy, they found no claim on the British government or on British tribunals. In the one case they must resort for redress to a quarter where, I fear, it is not to be found. . . . to the government of the enemy: in the other, where, I presume, it is to be found. . . . to the government of their own country.

Upon the declaration of the American government I have already said as much as consists with the

respect which I am bound to pay to the declaration of a foreign government, professedly neutral. The custom-houses of that country, say the claimants, cleared us out for France publicly, and without reserve. They did so; but they left the claimants to pursue all requisite measures for their own security, in expectation, I presume, that they would inform themselves, by legal inquiry, whether the blockade continued to exist, if its continuance was uncertain. That it was perfectly uncertain in their own apprehensions, is clear from the tenor of these letters of instructions to the different masters of these vessels. In these letters, which are numerous, all is problematical between hope and fear; a contest between the desire of getting first to a tempting market on the one side, and the possible hazard of British capture on the other; and it is to be regretted that the eagerness of mercantile speculation has prevailed over the sense of danger. In such a state of mind, acting upon circumstances, the party must understand that he takes the chance of events...of advantage, if the event which he hopes for has taken place, and of loss if it has not. It is his own adventure, and he must take profit or loss as the event may throw it upon him. He cannot take the advantage without the hazard of loss, unless by resorting to British ports in the Channel, where certain information may be obtained, on the truth of which all prospects of loss or profit may safely be suspended. On the British government, no responsibility can be charged. They were bound to revoke as soon as they were satisfied of the sincere revocation of the French decrees. Such satisfaction they have not signified, and I am bound to presume that no such satisfaction is felt. With respect to the demand of warning, the orders themselves are full warning. They are the most formal admonitions that could be given; and being given and unrevoked, they require no subsidiary notice.

On the grounds of the present evidence, I therefore see no reason to hold the claimants discharged; but I do not proceed to an ultimate decision upon their interests, till I see the effect of that additional evidence which is promised to be produced upon the fact of the French retraction of their decrees, said to have been very recently received from Paris, by the American *chargé-d'affaires* in this country. Having no official means of communication with foreign ministers, I shall hope to receive the information in a regular manner, through the transmission of the British officers of state.

[Final adjudication suspended.]

Extract of a letter from J. S. Smith, esq. to the Secretary of State, dated

“ LONDON, 16th June, 1811.

“ On the 9th instant, the day after Mr. Hamilton left town with my dispatches, I received the enclosed note from lord Wellesley, appointing Tuesday the 11th to see me at his house. I immediately wrote to captain Dent, to detain the frigate, until he heard from me again; but he had gone to sea before my letter reached Cowes, and I am now compelled to send this by another opportunity.

“ I waited on lord Wellesley, according to his appointment. He commenced the conversation by observing that, whenever there was any thing of importance to be communicated, it was better to do it in writing, as when merely verbal it was liable to be misunderstood; that he did not mean any thing personal to me; that the same rule was observed by the

other foreign agents here, and was customary. I replied, that I was ready to pursue this system; that in the note which I had written him, inclosing the non-importation act, I had not gone into a lengthy discussion, as that whatever I might say would be only a recapitulation of what had so often been written. I however proceeded to explain the new act, and to remark to him the particularly amicable nature of the second section of it; that I conceived this to be a most favourable opportunity for Great Britain to abandon her system of restrictions; and particularly at this moment, when I had communicated practical instances of the repeal of the obnoxious measures of France. He said that he did not think they would do any thing before they heard from Mr. Foster, who had full instructions upon this, and the other points in dispute.

“ I turned the conversation to the subject of your letter of the 22d of January, and asked him if Mr. Pinkney had given any explanations about the taking possession of West Florida. He replied, that the first he had heard of it, was through Mr. Morier, though he had reason to expect something from Mr. Pinkney; that Mr. Foster, however, was instructed on this point. I asked if East Florida was included in these instructions? He replied that it was. I then communicated to him the substance of your letter, and explained with frankness the intentions of the United States. He expressed his wish that this, as well as the other subjects, should lay over until they heard from America.

“ I shewed him the letter of the president to his majesty, containing Mr. Pinkney's permission to return. He said, that it would be proper that I should write him a note, inclosing this letter, and requesting him to present it to the prince regent.

“ The vessels detained here under the orders in council, have not yet been finally condemned, and

I represented to lord Wellesley how important it was, that they should be released, or that they should be still suspended. He said that he desired it also, but that private rights being concerned, it was difficult for government to interfere for their longer suspension. I am induced to believe that they will wait until they hear from Mr. Foster.”

Extract of a letter from John Spear Smith, esq. to the Secretary of State of the United States, dated

“ LONDON, 27th June, 1811.

“ I have the honour to inclose a copy of the final decision of sir William Scott, in the case of the Fox and others.

“ The court, on Tuesday last, the 25th inst. condemned the remaining American vessels captured under the orders in council. As soon as I can procure a correct list of them, I will have the honour to forward it. The seamen, who are left destitute by these condemnations, will be taken care of by general Lyman. They are of course numerous.”

Sir William Scott's sentence in the case of the Fox, &c. &c.

JUDGMENT RESUMED.

SIR WILLIAM SCOTT.—As the claimants have failed to produce any evidence of the revocation of the French decrees, and have nothing to offer as the foundation of a demand for further time, I must conform to what I declared on a former day, and proceed to make the decree effectual. I should certainly have been extremely glad to have received any authentic

information tending to shew that the decrees of France, to which these orders in council are retaliatory, had been revoked; and it was upon a suggestion offered on the part of the claimants, that dispatches had been very recently received from Paris by the American minister in this country, by which the fact might be ascertained, that the court on the former day deferred its final judgment. It would have been unwilling to proceed to the condemnation of these vessels, without giving the proprietors the opportunity of shewing that the French decrees, on which our orders in council are founded, had been revoked. But they admit that they have no such evidence to produce; the property of the ships and cargoes is daily deteriorating, and it is my duty to delay no longer the judgment which is called for on the part of the captors.

From every thing that must have preceded, and from every thing that must have followed the revocation of the French decrees, if such revocation had taken place, I think I am justified in pronouncing that no such event has ever occurred. The only document referred to on behalf of the claimants is the letter of the person styling himself *Duc de Cadore*. That letter is nothing more than a conditional revocation: it contains an alternative proposed, either that Great Britain shall not only revoke her orders in council, but likewise renounce her principles of blockade, principles founded upon the ancient and established law of nations; or that America shall cause her neutral rights to be respected; in other words, that she shall join France in a compulsive confederation against this country. It is quite impossible that England should renounce her principles of blockade to adopt the new-fangled principles of the French government, which are absolute novelties in the law of nations; and I hope it is equally impossible that America should lend herself to an hostile attempt to compel this country to renounce those principles on

which it has acted, in perfect conformity to ancient practice and the known law of nations, upon the mere demand of the person holding the government of France. The *casus fœderis* therefore, if it may be so called, does not exist; the conditions on which alone France holds out a prospect of retracting the decrees, neither are nor can be fulfilled. Looking at the question therefore, *a priori*, it cannot be presumed that the revocation has passed. On the other hand, what must have followed if such had been the fact? Why, that the American minister in this country must have been in possession of most decisive evidence upon the subject; for I cannot but suppose that the first step of the American minister at Paris would have been to apprise the American minister at this court, of so momentous a circumstance, with a view to protect the American ships and cargoes which had been brought in under the British orders in council. If no such information has been received by him, there never was a case in which the rule "*De non apparentibus et non existentibus eadem est ratio*" can more satisfactorily apply. For it is quite impossible that such a revocation can have taken place without being attended with a clear demonstration of evidence that such was the fact.

I am, therefore, upon every view of the case, of opinion, that the French decrees are at this moment unrevoked. But if by any possibility it can have happened that an actual revocation has taken place against the manifest import of the only public French declaration referred to, and without having been yet communicated to the American minister in this country, who was so much concerned to know it, for the benefit of the persons for whose protection it must have been principally meant; the parties will have the advantage of the fact, if they can shew upon an appeal that those decrees have been revoked at a time and in a manner that could justly be applied to

the determination of these causes ; revoked at a period which would reach the dates of this capture, and in a manner unincumbered with stipulations, which it was well known this country could never accept, and to which there was every reason to presume that the justice of America could never permit her to accede, upon the refusal of Great-Britain. On such a state of evidence the claimants will carry up with them to the superior court, the principle that might entitle them to protection according to the view which this court has taken of the subject. But things standing as they do before me ; all the parties having acted in a manner that leads necessarily to the conclusion, that no *bona fide* revocation of the Berlin and Milan decrees has taken place ; I must consider these cases as falling within the range of the British orders in council, and as such they are liable to condemnation.

Extract of a letter from Mr. J. S. Smith to the Secretary of State, dated

“ LONDON, July 10th, 1811.

“ Enclosed is a list of the American vessels that have been condemned at the late sittings of the court of admiralty. Two only of them have not yet been decided upon ; they will, however, share the fate of the others. Vessels and cargoes will be sold, and the money deposited in court to await for twelve months the appeal of the captured, from which very little is, I fear, to be expected.”

LIST OF VESSELS CONDEMNED.—(Received in Mr. J. S. Smith's Letter of July 10, 1811.)

VESSELS.	CAPTAIN.	FROM WHENCE.	CARGO.	VALUATION.	
				Vessel.	Cargo.
* Brig Fox,	Porter,	Boston,	Colonial produce, &c.	\$ 10,000	\$ 20,500
* Schooner Betsey,	Lindsey,	Marblehead,	Fish and oil, indigo and cotton,	3,500	21,500
* Mary,	Vickery,	Do.	Ditto. (green,)	2,000	1,800
* Polly,	Devereux,	Do.	do.	2,000	1,800
* Ann,	Dolliber,	Do.	Ditto.	3,500	7,000
* Woodbridge,	Kinman,	Boston,	Fish, oil, &c.	20,000	65,000
* Ship Danube,	Pierce,	New York,	Cotton, rice, indigo, &c.	12,000	25,000
* Brig Matilda,	Lee,	Boston,	Cotton, fish, teas, and nankeens.	8,000	38,000
* Eliza,	Corgie,	Philadelphia,	Cotton, peltry, &c.	20,000	45,000
* Ship Adolphus,	Brevout,	New York,	Tobacco, peltry, &c.	15,000	30,000
* Rebecca,	Tobey,	Do.	Sugar, coffee, &c.	2,000	1,800
* Schooner Two Sisters,	Bridges,	Marblehead,	Fish, (green,)	8,000	30,000
* Brig Garland,	Haff,	New York,	Cotton, indigo, &c.	8,000	20,000
* Ship Betsey,	Millwood,	Norfolk,	Tobacco,	13,000	7,000
* Brig Ida,	Stacey,	Boston,	Fish, &c. (dry,)	17,000	20,000
* Beauty,	Morris,	Philadelphia,	Cotton, colonial, &c.	10,000	25,000
* Ship Charleston Packet,	Weakes,	Do.	Cotton and peltry,	12,000	25,000
* Andrew,	Coggins,	Bayonne,	Brandy, wine, and silks,	12,000	25,000
* Rose in Bloom,	Aliot,	Do.	do.	8,000	30,000
* Projector,	Brown,	New York,	Cotton, ivory, &c.	3,500	14,000
* Schooner Lidia,	Kelham,	Bordeaux,	Brandy, wine, and silks,	8,000	20,000
* Ship Eleanor,	Kempton,	Savannah,	Cotton, rice, and tobacco,	3,500	4,000
* Brig Telemachus,	Berry,	Marblehead,	Fish and oil,	4,000	6,000
* Schooner Lark,	Cloutman,	Bordeaux,	Brandy, wine, and silks,	2,000	1,800
* Ship Golden Fleece,	Silkman,	Marblehead,	Fish, (green,)	25,000	45,000
* Louisiana,	Richards,	Charleston,	Cotton, rice, wax, &c.	7,500	15,000
Brig Fox,	Goodey,	New York,	Cotton, &c.	15,000	50,000
		Do.	Cotton and indigo,	\$ 256,500	\$ 576,000

* Condemned, June 18. † Condemned, June 21. ‡ Condemned, July 5. || Not yet decided, but must be like the others.

Mr. J. S. Smith to the Secretary of State.

LONDON, 22d July, 1811.

SIR,

I have the honour to enclose a copy of Mr. Russell's letter to me of the 14th inst. which contains the agreeable intelligence of the release of three of the captured American vessels. I shall communicate its substance to this government without the formality of an official note, supposing that Mr. Foster is fully instructed on the subject of the orders in council; and that any thing I might under these circumstances offer would be attended with no advantage. I inclose also a letter from Mr. Russell of the 5th inst.

I have the honour to be, &c.

(Signed)

J. S. SMITH.

The hon. the Secretary of State.

☞ The papers that came in this letter, make part of the inclosures in Mr. Monroe's letter to Mr. Foster of 17th October, and are printed with it, see page 77.

Extract of a letter from Mr. John S. Smith to the Secretary of State of the United States, dated

“ LONDON, 15th August, 1811.

“ I have now the honour to transmit to you lord Wellesley's answer to my note covering Mr. Russell's letter of the 14th July, and also another note from his lordship on the same subject, which I received last evening.”

☞ The papers that came in this letter, make part of the inclosures in Mr. Monroe's letter of the 17th October, to Mr. Foster, and are printed with it, see page 77.

CORRESPONDENCE

OF

JONATHAN RUSSELL, ESQUIRE.

Mr. Russell to Mr. Smith, Secretary of State.

PARIS, January 16, 1811.

SIR,

Your letter of the 8th of November, relative to the powers given by this government to its consuls in the United States, under its decree concerning licences, was received by me on the 11th instant, and the next day I communicated its contents to the duke of Cadore in a note, a copy of which you will find enclosed.

I remain, &c. &c.

(Signed)

JONATHAN RUSSELL.

The honourable Robert Smith, &c.

Mr. Russell to the Duke of Cadore.

PARIS, January 12, 1811.

SIR,

The public journals and letters from general Armstrong have announced to the American government an imperial decree, by which permission is to

be granted to a stated number of American vessels, to import into France from certain ports of the United States, the articles therein specified, and to export in return such productions of the French empire as are also enumerated in said decree. This trade, it would appear, is to be carried on under the authority of imperial licences, and can only be perfected by the act of the French consul residing within the jurisdiction of the United States at the specified ports.

The United States have no pretension of right to object to the operation of commercial regulations, strictly municipal, authorized by the French government to take effect within the limits of its own dominions; but I am instructed to state to you the inadmissibility, on the part of the United States, of such a consular superintendance as that which is contemplated by this decree respecting a trade to be carried on under licences.

France cannot claim for her consuls, either by treaty or custom, such a superintendance. They can be permitted to enjoy such legitimate functions only as are sanctioned by public law, or by the usage of nations growing out of the courtesy of independent states.

Besides, the decree in question professes to invest certain consuls with a power, which cannot be regularly exercised in the United States without the tacit permission of the American government; a permission that cannot be presumed, not only because it is contrary to the usage, but because consuls thus acting would be exercising functions in the United States in virtue of French authority only, which the American government itself is not competent to authorize in any agents whatever.

If the construction given by the government of the United States to this decree be correct, the government of France should not for a moment mislead

itself by a belief, that its commercial agents will be permitted to exercise the extraordinary power thus intended to be given to them.

I pray your excellency, &c. &c.

(Signed) JONATHAN RUSSELL.

His excellency the duke of Cadore.

Mr. Russell to Mr. Smith, Secretary of State.

PARIS, 21st January, 1811.

SIR,

On the 18th instant I received a note dated that day from the duke of Cadore, in answer to the representation which I had made to him on the 12th of this month, relative to the exceptionable powers intended to be exercised by French consuls in the United States, in perfecting the contemplated trade under licences.

You will perceive with satisfaction, that not only these powers, but the system itself, under which they were to have been exercised, have been abandoned.

I have the honour, &c. &c.

(Signed) JONATHAN RUSSELL.

Hon. Robert Smith, &c. &c.

[TRANSLATION.]

The Duke de Cadore to Mr. Russell.

PARIS, 18th January, 1811.

SIR,

I have read with much attention your note of the 12th January, relative to the licences intended to

favour the commerce of the Americans in France, this system had been conceived before the revocation of the decrees of Berlin and Milan had been resolved upon. Now circumstances are changed by the resolution taken by the United States, to cause their flag and their independence to be respected, that which has been done before this last epoch, can no longer serve as a rule under actual circumstances.

Accept the assurances of my high consideration,
CHAMPAGNY,
Duke de Cadore.

Mr. Russell to the Duke of Bassano.

PARIS, 29th April, 1811.

SIR,

Encouraged by the assurances which your excellency was pleased to give me in the conversation which I had the honour to hold with you yesterday, that the French government was disposed to promote, as far as might be in its power, the success of the mission of the special minister of the United States to the court of Denmark, I dare persuade myself that your excellency will feel no hesitation in returning such an answer to the following inquiries as shall place the facts to which they relate beyond the possibility of doubt or controversy.

1st. Did not the minister of foreign relations, by a dispatch dated the 20th of April, 1808, authorize the consuls of France in the United States to deliver certificates of origin to vessels destined for neutral or allied ports, and prescribe the formalities required for such certificates?

2d. Was not the dispatch of the duke of Cadore, of the 30th of August last, the first that was received

in the United States, either by the French minister or consul general there, prohibiting the further delivery by French consuls of certificates of origin, except to vessels destined to French ports?

3d. Was not this last-mentioned dispatch first received by general Turreau, on the 13th of November last, and for the first time communicated by him on that day to the French consuls? And were not the consuls in the official and authorized practice, until the said 13th of November, of furnishing certificates of origin to American vessels bound to neutral ports, or to ports belonging to the allies of France? and might not some of these consuls, by reason of their distance from the place of residence of general Turreau, have lawfully executed and delivered such certificates several days subsequent to that time?

These facts are directly established by the letter of general Turreau to Mr. Smith, of the 12th of November last, or necessarily inferred from the declaration contained in that letter; and I cannot permit myself to doubt that your excellency will readily repeat them in a form that shall claim the attention of the Danish government, and induce it to correct any errors which an ignorance or misapprehension of them may have occasioned in its proceedings against American property.

I rely with the more confidence on the frankness of your excellency in according the request now presented to you, as a refusal might operate the confiscation of much innocent property, and at the same time appear to falsify the lawful acts of the consuls and the official declaration of the minister of France in the United States.

I beg leave to renew to your excellency the assurance, &c. &c.

(Signed) **JONATHAN RUSSELL.**

His excellency the Duke of Bassano.

Mr. Russell to Mr. Smith.

PARIS, 27th May, 1811.

SIR,

By the first opportunity which presented itself after the admission of our vessels on the 4th of May, I communicated this event to the American *chargé d'affaires* at London, in hopes that it might be useful there. The enclosed is a copy of the note which I addressed to him on the occasion.

I am, &c. &c.

(Signed) JONATHAN RUSSELL.

The honourable Robert Smith,
Sec'y of State of the United States.

Mr. Russell to Mr. J. S. Smith.

PARIS, 10th May, 1811.

SIR,

I hand you herewith the copy of a letter to me from his excellency the duke of Bassano, dated the 4th inst. * and inclosing a list of the American vessels whose cargoes have been admitted by order of the emperor.

As this list contains all the American vessels, except one only, whose papers were mislaid, which have arrived spontaneously in the ports of France, since the first of November last, which had not already been admitted; the measure adopted by this government may perhaps be considered to be of a general character, and a consequence of the actual relations between the two countries, growing out of the revocation of the Berlin and Milan decrees, so far as they violated the neutral rights of the United States.

I am, sir, with great consideration, &c.

(Signed) JONATHAN RUSSELL.

John S. Smith, esq. &c. &c.

* See this copy in the inclosures of Mr. Russell's letter 15th July, which will be found in a subsequent part of this correspondence.

Mr. Russell to the Secretary of State.

PARIS, 9th of June, 1811.

SIR,

The case of the New Orleans Packet having apparently excited considerable interest, it may not be unacceptable to you to receive a more particular account of it than I have hitherto transmitted.

This vessel, owned by Mr. Alexander Ruden, of New York, left that place on the 25th of July, with a clearance for Lisbon, but actually destined for Gibraltar. Her cargo, likewise the property of Mr. Ruden, consisted of 207 whole tierces and 31 half tierces of rice, 330 bags of Surinam cocoa, 10 hogsheads of tobacco, 6 tierces of hams, 50 barrels of pork, 60 barrels of beef, 200 barrels of flour, 30 tierces of beans, and 64 firkins of butter. On her passage to Gibraltar, she was boarded by an English frigate and an English schooner, and after a short detention allowed to proceed. On arriving at Gibraltar the 26th of August, Mr. Munroe, the supercargo, proceeded to sell the cargo, and actually disposed of the flour, the beans and the butter, when about the 20th of September a packet arrived there from England bringing newspapers containing the publication of the letter from the duke of Cadore of the 5th of August. On the receipt of this intelligence, Mr. Munroe immediately suspended his sales, and after having consulted with Mr. Hackley, the American consul at Cadiz, he determined to proceed with the remainder of his cargo to Bordeaux. He remained however at Gibraltar until the 22d of October, that he might not arrive in France before the 1st of November, the day on which the Berlin and Milan decrees were to cease to operate. He arrived in the Garonne on the 14th of November, but by reason of his quarantine did not reach Bordeaux before the 3d of December. On the

5th of this month the director of the customs there seized the New Orleans Packet and her cargo under the *Milan decrees* of the 23d November and 17th December, 1807, expressly set forth, for having come from an English port, and for having been visited by an English vessel of war. These facts having been stated to me by Mr. Munroe, or by Mr. Meyer, the American vice-consul at Bordeaux, and the principal one, that of the seizure under the Milan decrees, being established by the *procès-verbal* put into my hands by Mr. Martini, one of the consignees of the cargo, I conceived it to be my duty not to suffer the transaction to pass unnoticed, and thereby permit it to grow into a violation of the engagements of this government. While I was considering the most proper mode of bringing the conduct of the custom-house officer at the port under the eyes of his superiors, I learnt of the arrival of the *Essex* at L'Orient. From the time at which this frigate was reported to have left the United States, I had no doubt that she had brought the proclamation of the president, announcing the revocation of the very decrees under which this precipitate seizure had been made. I could but think, therefore, that it was important to afford to this government an opportunity of disavowing the conduct of its officer, so incompatible with the engagements on which the president had in all probability reposed with confidence, in season to shew that this confidence had not been mistimed or misplaced. To have waited for the receipt of the proclamation in order to make use of it for the liberation of the New Orleans Packet, appeared to me a preposterous and unworthy course of proceeding, and to be nothing better than absurdly and basely employing the declaration of the president that the Berlin and Milan decrees *had been* revoked, as the means of obtaining their *revocation*. I believed it became me to take higher ground, and, without confining myself to the

mode best calculated to recover the property, to pursue that which the dignity of the American government required.

A crisis in my opinion presented itself, which was to decide whether the French edicts were retracted as a preliminary to the execution of our law, or whether by the non-performance of one party and the prompt performance of the other, the order in which these measures ought to stand was to be reversed, and the American government shuffled into the lead where national honour and the law required it to follow. Uncertain what would be the conduct of this government, but clear what it ought to be, I thought it politic to present briefly the honest construction of the terms in which the revocation of the decrees was communicated on the 5th of August, that the conditions might not be tortured into a pretext for continuing them. I believed this to be the more necessary, as no occasion hitherto occurred for offering such an interpretation. I likewise supposed it to be desirable to take from this government, by a concise statement of facts, the power of imputing neglect to the United States, in performing the act required of them, for the purpose of finding in this neglect a colour for again executing the decrees. These were my views in writing promptly and frankly on the occasion.

So acceptable indeed did I suppose it would be to the feelings of the American government, to obtain at least an explanation of an act ostensibly proving the continued operation of the decrees, previous to communicating the proclamation of the president, announcing their revocation, that, although I received this proclamation on the 13th of December, I deferred the communication of it to the duke of Cadore, until the 17th of that month; nor should I then have communicated it, had not an interview with him, on the 15th, led me to believe that much time might be

necessary to procure official reports from the custom-house relative to the seizure in question, and that until these reports were received, it would be impossible formally to explain or correct this proceeding. When, however, I declined, uninstructed as I was, incurring the responsibility of this protracted delay, and decided on communicating the proclamation before a satisfactory explanation was received, I took care to guard against any misconstruction, by explicitly declaring at the outset, that this proclamation "had been issued alone on the ground that the revocation of the Berlin and Milan decrees did not depend on any condition previously to be performed by the United States."

The custom-house officers at Bordeaux commenced unloading the New-Orleans Packet on the 10th of December, and completed this work on the 20th of that month, as appears by their *procès-verbal* of those dates. That of the 20th expressly declares that the confiscation of this property was to be pursued before the imperial council of prizes at Paris, according to the decrees of the 23d November and 17th of December, 1807; or, in other words, the decrees of Milan. The decree of the 23d of March, or the Rambouillet decree, is also mentioned; but as I wrote my note of the 10th of December with a view only to the letter of the duke of Cadore announcing the revocation of the Berlin and Milan decrees, and as the *procès-verbal* of the 5th appears to waive the applications of the Rambouillet decree as unnecessary, I took no notice of it.

On Monday the 17th of December my remonstrance was submitted to a council of commerce, and referred by it to the director-general of the customs for his report. From this time, all further proceedings against the New Orleans Packet were suspended. The papers were not transmitted to the council of prizes, nor a prosecution instituted before that tribunal

for the confiscation of the property, as was professedly the intention of the officers concerned in the seizure. This prosecution was not only abandoned, but on the 9th of January the vessel and cargo were placed at the disposition of the consignees, on giving bond to pay the estimated amount, should it definitively be so decided. Nothing is now wanting to complete the liberation of the New Orleans Packet and her cargo but the cancelling of this bond.

It appears, therefore, that the remonstrance of the 10th of December arrested the proceeding complained of, before it had assumed a definitive character, or unequivocally become a breach of faith, and not only rescued the property from the seizure with which it had been visited, but, by procuring its admission, placed it in a situation more favourable than that of many other vessels and cargoes, which continued to be holden in a kind of *morte-main* by the suspension of all proceedings with regard to them.

I have the honour to be, &c. &c.

(Signed) JONA. RUSSELL.

Hon. Secretary of State of the United States.

P. S. July the 5th. I have the satisfaction to announce to you that since writing the above, an order has been given to cancel the bond, and a letter just received from the commercial agent of the United States at Bordeaux, informs me that it is actually cancelled.

Mr. Russell to Mr. Monroe.

PARIS, July 14, 1811.

SIR,

I have the honour to hand you herein, a copy of my note of the 8th instant to the duke of Bassano,

claiming the release of twenty-three American seamen stated to have been pressed into the French service at Dantzic and in its vicinity. When I called on the duke on the 9th, he acknowledged the receipt of this note, and said that he should immediately write to the minister of marine on the subject. In the conversation which I had with him yesterday, he informed me that he had performed this engagement, and that the minister of marine had replied, that no American citizens had been pressed by his orders; that the city of Dantzic had been required to furnish a certain number of seamen, and was alone responsible for the manner in which it had complied with this requisition. The duke of Bassano also added, that my note had been laid before the emperor, and that his majesty had ordered, that on the arrival of the seamen from Dantzic at Antwerp, where they were expected yesterday, all that were American citizens should be discharged, and the city of Dantzic should be required to furnish others in their stead. From the solicitude which the duke of Bassano evidently discovered to get rid of the imputation of having pressed our citizens, I doubt not every thing will be done in this affair to remove all cause of complaint.

I am, &c. &c.

(Signed)

JONATHAN RUSSELL.

The Secretary of State
of the United States.

Mr. Russell to the Duke of Bassano.

PARIS, 8th July, 1811.

SIR,

I have just received information, by a letter from J. W. Zubre, esquire, who holds a commission as

consul of the United States at Stettin, that on the 17th ult. *twenty-three* American seamen passed that place, under escort of a French guard, to be put on board the ships of war at Antwerp. It is represented to me that these seamen had been forcibly pressed, at Dantzic and other places on the Baltic, by order of his excellency the minister of marine. In confirmation of this fact, I have a letter from captain Charles Payne, of the American ship *Atlantic*, taken into Dantzic by a French cruizer, stating that twelve of his men, including his mate, had been pressed in this way at that place. These twelve men probably constitute a part of the twenty-three above mentioned.

It is my duty to engage your excellency to cause an inquiry to be had, to the competent authority, into these facts, and to procure the release of all the seamen above mentioned who are citizens of the United States.

I pray your excellency to accept, &c.

(Signed)

JONATHAN RUSSELL.

His excellency the Duke of Bassano.

Extract of a letter from Mr. Russell to the Secretary of State of the United States, dated

PARIS, 15th July, 1811.

“ On the 5th of that month [May] I received a note [No. 1] from the duke of Bassano, dated the 4th, containing a list of sixteen American vessels whose cargoes had been admitted by order of the emperor. I immediately transmitted to you several copies of this communication, and I gave you on the 8th such an account [No. 2] of the admitted cases, as might aid you in forming a correct estimate of the political value of the measure adopted in their favour.

D D

Although I was fully impressed with the importance of an early decision in favour of the captured vessels, none of which had been included in the list above mentioned, yet I deemed it proper to wait a few days before I made an application upon the subject. By this delay I gave the government here an opportunity of obtaining the necessary information concerning these cases, and of pursuing spontaneously the course which the relations between the two countries appeared to require. On the 11th, however, having learnt at the council of prizes that no new order had been received there, judged it to be my duty no longer to remain silent, lest this government should erroneously suppose that what had been done was completely satisfactory to the United States, and, construing my silence into an acquiescence in this opinion, neglect to do more. I therefore on that day addressed to the duke of Bassano my note [No. 3] with a list of American vessels captured since the 1st of November. On the 16th, I learnt that he had laid this note, with a general report on it, before the emperor; but that his majesty declined taking any decision with regard to it, before it had been submitted to a council of commerce. Unfortunately, this council did not meet before the departure of the emperor for Cherbourg; and during his absence, and the festivals which succeeded it, there was no assemblage of this body.

Immediately on receiving the communication of the duke of Bassano of the 4th of May, I addressed him a note [No. 4] concerning the brig Good Intent, detained at St. Andero. Although this vessel had in fact been captured, yet, from the peculiar circumstances of the case, I hoped that she would be placed on the same footing as those which had been admitted. The answer [No. 5] which was returned by the duke of Bassano, dated the 25th and received the 28th, announced to me, however, that this affair must

be carried before the council of prizes. Wishing to rescue this case from this inauspicious mode of proceeding, I again addressed him in relation to it, in a note [No. 6] on the 2d of June. If I could not obtain at once the restoration of this vessel, it was desirable, at least, that she should be admitted to the benefit of the general measure, which I insinuated might be taken in favour of the captured class mentioned in my note of the 11th of May.

As in this note I have stated the case of the Good Intent to be analogous to those of the Hare and the John, it may be proper to explain to you both the points of resemblance and diversity, in order to reconcile this note with my declaration, that no captured vessel was on the list of the 4th of May. The cases agree in the destination to places under the authority of France, and in the arrestation by launches in the service of the French government; they differ in the Hare and John having already, before they were taken, arrived at the port, and within the territorial jurisdiction of the country to which they were bound, and the Good Intent having been taken without such jurisdiction, and conducted to a port to which she was not destined. The taking possession of the Hare, and the John, may be considered then as a seizure in port, and that of the Good Intent as a capture on the high seas.

On perceiving that the schooner Friendship was not named in the list of admitted vessels, I caused inquiry to be made at the custom-house concerning the cause of this omission. It was stated that her papers had been mislaid, but that search was making for them, and that, when found, a report would immediately be made. I waited for this report until the 18th of May; but finding it had not been made, I conceived it might be useful, in order to accelerate it, and to render complete the admission of the entire class to which this case belonged, to attract towards the Friendship the

attention of the minister of foreign relations. With this view, I presented to him my note [No. 7] of that date.

Having reflected much on the condition, attached to the admission of the American cargoes, to export two thirds of the proceeds in silks, and being persuaded that the tendency of this restriction, added to the dangers of a vigilant blockade, and to the exactions of excessive tariff, was to annihilate all commercial intercourse between the two countries, I believed it would not be improper for me to offer to this government a few remarks on the subject. This I was the more inclined to do, as it was to be apprehended that this condition was not imposed as an expedient, for temporary purposes only, but that it was intended to be continued as the essential part of a permanent system. In a note, therefore, of the 10th of June, [No. 8] I suggested to the duke of Bassano the evils which might be expected naturally to result from the operation of this restriction on exports. It is indeed apparent, that a trade that has to run the gauntlet of a British blockade, and is crushed with extravagant duties inwards, and shackled with this singular restriction outwards, cannot continue.

On the 14th of June, Mr. Hamilton, of the John Adams, reached Paris, and informed me that this vessel had arrived at Cherbourg. Unwilling to close my dispatches by her, without being able to communicate something of a more definite and satisfactory character than any thing which had hitherto transpired, I immediately called at the office of foreign relations; but the minister being at St. Cloud, I was obliged to postpone the interview which I sought, until the Tuesday following. At this interview I stated to him the arrival of the frigate, and my solicitude to transmit by her to the United States, some act of his government, justifying the expectation with which the important law which she had brought hither, had

undoubtedly been passed. I urged particularly a reply to my note of the 11th of May, relative to the captured vessels, and observed, that although the mere pecuniary value of this property might not be great, yet in a political point of view its immediate liberation was of the utmost consequence. I intimated to him at the same time, that my anxiety was such to communicate, by the John Adams, a decision on these captures to the American government, that I should detain this vessel until I had received it. He replied that his sentiments accorded perfectly with mine in this matter, and ascribed the delay which had taken place to the same causes as I have assigned. He assured me, however, that he would immediately occupy himself again with this business, and unless a council of commerce should be holden within a few days, he would make a *special* report to the emperor, and endeavour to obtain a decision from him in person. He approved my intention of detaining the frigate, and engaged to do whatever might depend on him, to enable me to dispatch her with satisfaction. He added that he had already made inquiries of the competent authorities, concerning the Good Intent and the Friendship, and that when their reports should be received, he would do whatever the circumstances of the cases might warrant.

I now suggested to him the evils which resulted to our commercial intercourse with France, from the great uncertainty which attended it, owing to the total want on their part of clear and general regulations. After making a few observations in explanation of this remark, I requested to know if he would have any communication to make to me on the subject previous to the sailing of the John Adams. I was led to make this inquiry from information which I had indirectly obtained, that several resolutions for the regulation of our trade had been definitively decreed. He replied, that no such communication would be made here, but that Mr. Serrurier would be fully in-

structed on this head. The resolutions just mentioned, as far as I have learnt, are, to admit the produce of the United States (except sugar) without special permits or licences; to admit coffee, sugar, and other colonial produce, with such permits or licences, and to prohibit every thing arriving from Great Britain, or places under her controul.

He again mentioned the discovery of the regulation of the year twelve, authorizing the certificates of origin for French ports only, or for ports in possession of the French armies; but declared that after the most thorough examination of the archives of his department, no document or record had been found permitting these certificates to be granted for the ports of neutral or allied powers. He again, however, professed a favourable disposition towards our negotiations in Denmark, and said, "Le succès de la mission de Mons. Erving s'accorderait parfaitement avec nos sentimens, et ne contrarierait nullement notre politique."

With the view above stated, I detained the John Adams until the 9th instant. I had from time to time, in the mean while, informed myself of the proceedings with regard to the captured vessels, and ascertained that in fact the duke of Bassano had made a report in relation to them. The emperor, it appears, however, still wished for the decision of his council of commerce, and the report was laid before them on the 1st of this month, being the first time they had assembled since the date of my letter of the 11th May. I waited in daily expectation of hearing the result of their deliberations, until the 9th instant, when, conceiving sufficient time had been allowed for receiving it, and not feeling perfectly at my ease under the responsibility I was incurring for the unauthorized detention of the John Adams, I determined to learn from the duke of Bassano, in person, what I might reasonably expect in the matter. I accordingly procured an interview with him on the day last mentioned. I reminded him of what had passed at our conference on the 18th

ultimo, and told him that in consequence thereof, I had kept the ship; but that I could not with propriety detain her longer, without the evident prospect of obtaining from the French government the release of the captured vessels. He expressed a conviction of the justice of my observations, and assured me that he was in hourly expectation of receiving a decision on the captured cases, and hoped that the John Adams might not be permitted to return without it. I thereupon consented to keep my dispatches open until the 13th, assuring him that I could not take upon myself to protract the detention of the John Adams beyond that period.

On the 13th, about one o'clock, I received a note from the duke of Bassano, of which the enclosed [No. 9] is a copy. I waited upon him immediately, and was informed that the Two Brothers, the Good Intent, and the Star, three of the captured vessels, had been liberated. He added, that no unnecessary delay would be allowed in deciding upon the whole.

I shall dispatch Mr. Hamilton this day, and I shall send with him a messenger to be landed on the other side, who will carry to Mr. Smith an account [No. 10*] of what has been done here, to be used by him as he shall judge proper."

No. 1.

[TRANSLATION.]

The Duke of Bassano to Mr. Russell.

PARIS, 4th May, 1811.

SIR,

I hasten to announce to you that H. M. the emperor has ordered his minister of finance to authorize the admission of the American cargoes which had

* See the letter from Mr. Russell to Mr. Smith, *chargé d'affaires*, &c. &c. dated the 14th July, enclosed in Mr. Monroe's letter of 17th October, to Mr. Foster.

been provisionally placed in deposit on their arrival in France.

I have the honour to send to you a list of the vessels to which these cargoes belong; they will have to export the amount of them in national merchandise, of which the two thirds will be in silks.

I have not lost a moment in communicating to you a measure perfectly in accord with the sentiments of union and of friendship which exist between the two powers.

Accept, sir,

The assurance of my high consideration.

(Signed) DUC DE BASSANO.

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No. 2.

Mr. Russell to the Secretary of State.

PARIS, 8th May, 1811.

SIR,

I had the honour to address to you on the 6th inst. by various ports, several copies of the note of the duke of Bassano to me on the 4th, containing a list of the vessels, the admission of whose cargoes had been authorized by the emperor.

This list comprises all the American vessels which had arrived, without capture, in the ports of France or the kingdom of Italy, since the first of November, and which had not already been admitted, excepting the schooner Friendship.

The papers of the Friendship had been mislaid at the custom-house, and no report of her case made to the emperor.

As the New Orleans Packet and her cargo had been given up *on bond* in January last, there can be no longer any question with regard to their admission; but

to make their liberation complete, the bond should be cancelled.

All the vessels mentioned in the list, excepting the Grace Ann Greene, had come direct from the United States, without having done or submitted to any known act, which could have subjected them to the operation of the Berlin and Milan decrees, had these decrees continued in force.

The Grace Ann Greene, stopped at Gibraltar, remained many days there, and in proceeding thence to Marseilles was captured by an English vessel of war. The captain of the Grace Ann Greene with a few of his people rose upon the British prize-crew, re-took his vessel from them, and carried her and them into the port to which he was bound.

The captain considered this re-capture of his vessel as an act of resistance to the British orders in council, and as exempting his property from the operation of French decrees professedly issued in retaliation of those orders. He likewise made a merit of delivering to this government nine of its enemies to be treated as prisoners of war.

His vessel was liberated in December, and his cargo the beginning of April last; and there is some difficulty in precisely ascertaining whether this liberation was predicated on the general revocation of the Berlin and Milan decrees, or on a special exemption from them owing to the particular circumstances of the case.

It is somewhat singular this vessel was placed on the list of the 4th inst. when she had been liberated and her cargo admitted so long before.

It may not be improper to remark, that no American vessel, captured since the 1st of November, has yet been released or had a trial.

These are the explanations which belong to the measure I had the honour to communicate to you on the 6th instant, and may afford some assistance in

forming a just appreciation of its extent and character.

I have the honour to be, Sir,
 With great consideration and respect,
 Your most faithful and assured servant,
 (Signed) JONA. RUSSELL.

No. 3.

Mr. Russell to the Duke of Bassano.

PARIS, 11th May, 1811.

SIR,

I have the honour to present to your excellency a list of the American vessels which, according to the information I have obtained, have been captured by French privateers since the first of November last, and brought into the ports of France. All proceedings in relation to these vessels have been suspended in the council of prizes, with the same view, no doubt, as the proceedings in the custom-house had been deferred with regard to those which had arrived voluntarily. The friendly admission of the latter encourages me to hope that such of the former at least as were bound to French ports, or to the ports of the allies of France, or to the United States, especially those in ballast, will be immediately released, and that orders will be given to bring on the trials of the remainder, should such a course be judged indispensable, without any unnecessary delay.

The measure for which I now ask, being in perfect accord with the friendly sentiments which prevail between the two countries, I persuade myself will obtain the early assent of his majesty.

I pray your excellency to accept the assurances of my highest consideration.

(Signed) JONATHAN RUSSELL.

The duke of Bassano, &c. &c.

LIST OF AMERICAN VESSELS
 Taken by French Privateers, since the 1st of November, 1810,

AND CARRIED INTO THE PORTS OF FRANCE.

VESSELS.	Where From.	Where Bound.	CARGOES.	When taken.	WHERE BROUGHT.
Robinson Ova.	Norfolk,.....	London,.....	Tobacco, cotton, and staves,	21st December, 1810,	Dunkirk.
Mary Ann,.....	Charleston,...	Id,.....	Cotton and rice,.....	3d March, 1811,.....	Id.
General Eaton,	London,.....	Charleston,...	In ballast,.....	6th December, 1811,	Calais.
Neptune,.....	Id,.....	Id,.....	Id,.....	7th do,.....	Dieppe.
Clio,.....	Id,.....	Philadelphia,...	English Manufactures,.....	Id,.....	{ Vessel lost off Trequier, part of cargo saved.
Two Brothers,...	Boston,.....	St. Malo,.....	Cotton, indigo, pot-ashes, cod-fish, fish-oil, and dye- wood,.....	20th Id,.....	St. Malo. N. B. This vessel was taken within the territo- rial jurisdiction of France.
Star,.....	Salem,.....	Naples,.....	Coffee, indigo, fish, dye- wood, &c,.....	2d February, 1811,...	Marseilles.
Zebra,.....	Boston,.....	Tarragona,.....	40,000 staves,.....	27th January, do,....	Do.

No. 4.

Mr. Russell to the Duke of Bassano.

PARIS, 6th May, 1811.

SIR,

I feel it my duty to represent to your excellency, that the American brig *Good Intent*, from Marblehead, with a cargo of oil, fish, cocoa and staves, bound to Bilboa, was captured in December last by an armed launch in the service of the French government, and carried into Santander. Mr. J. P. Rattier, the consul of his majesty the emperor at that place, has taken possession of the cargo, and sold that part which was perishable, retaining in his hands the proceeds, and placing in *dépôt* the articles unsold, until he shall receive the superior orders of his government.

The present flattering appearance that the relations between France and the United States will be preserved on the most amicable footing, encourages me to hope that the case of the *Good Intent*, after the long detention that has occurred, will attract the early attention of the French government, and that the property will be restored to the American owner.

I pray your excellency to accept the assurances of my high consideration.

(Signed)

JONA. RUSSELL.

His excellency the Duke of Bassano,
minister of exterior relations.

No. 5.

[TRANSLATION.]

The Duke de Bassano to Mr. Russell.

PARIS, 25th May, 1811.

SIR,

The object of the letter you have done me the honour to address to me on the 7th of this month, was

to remonstrate against the sequestration of the American ship the "*Good Intent*," which had been carried into St. Andero by a French vessel.

The minister of marine to whom I hastened to write on this subject, has just answered me, that the case is carried before the council of prizes, which is alone competent to decide on the validity of the capture. He adds, that it is before that tribunal that the owners of the *Good Intent* ought to be prepared to establish their rights, and that he will have no other agency in this affair than to cause to be executed the decision which shall be made.

Accept, sir, the assurance of my high consideration.

(Signed)

LE DUC DE BASSANO.

Mr. Russell, *chargé des affaires* of the United States.

No. 6.

Mr. Russell to the Duke of Bassano.

PARIS, June 2, 1811.

SIR,

By the letter which your excellency did me the honour to address to me on the 25th ultimo, I perceive that the minister of marine declines interfering in the case of the American brig the *Good Intent*, except to enforce the decision which the council of prizes may render.

As the *Good Intent* was captured bound to a port in the possession of the French armies, by a launch in the service of the French government, I had persuaded myself that she would not be treated as a prize; but that she would be restored like the *John* and the *Hare*, at Civita Vecchia, without the delay of a formal

trial. It was in this expectation that I omitted to place her on the list of American vessels captured since the 1st of November last, which I had the honour to address to your excellency, in my note of the 11th ultimo. If his majesty the emperor should find it improper, upon being made acquainted with the circumstances of this case, to distinguish it from cases of ordinary capture, I presume there will be no objection to extending to it the benefit of any general decision which may be taken in regard to those mentioned in the list aforesaid.

I pray your excellency to accept the assurance of my high consideration.

(Signed) JONA. RUSSELL.

His Excellency the Duke of Bassano.

No. 7.

Mr. Russell to the Duke of Bassano.

PARIS, May 18, 1811.

SIR,

On examining the list of vessels whose cargoes have been admitted, and which your excellency did me the honour to inclose to me in a note dated the 4th of this month, I have discovered that the schooner Friendship has been omitted.

This vessel, as I am informed, arrived at Bordeaux on the 6th of December last, with a cargo of coffee, which from long detention has suffered considerable damage. As there is no circumstance, within my knowledge, to distinguish the cargo of this vessel from those which have been admitted, I doubt not that her case will be inquired after, and that she will be placed upon the same footing as the others.

I pray your excellency to accept the assurance of my highest consideration.

(Signed) JONA. RUSSELL.

His excellency the Duke of Bassano,
minister of exterior relations.

No. 8.

Mr. Russell to the Duke of Bassano.

PARIS, 10th June, 1811.

SIR,

I conceive it to be my duty to represent to your excellency, that the condition attached to the admission of American property in France, to export two-thirds of the amount in silks, is attended with great inconvenience and loss to the American merchant.

A general requisition to export the neat proceeds of imported cargoes in the produce and manufactures of the French empire, would have been so obviously intended to favour its industry and to prevent any indirect advantage resulting to its enemy by the remittance of exchange, that the right and policy of the measure would have been universally acknowledged. The American merchant, in this case, permitted to select from the various and abundant productions of the arts and agriculture of France, those articles which the habits and tastes of the American people demanded, might freely and advantageously have exercised his commercial skill for the advancement of his interests, and hoped, from the profit on his investments here, to obtain an indemnity for the losses on his outward voyage.

The condition, however, imposed on him to receive two-thirds of these investments in a particular article takes from him the faculty of profiting of his experience and information, either in bargaining for his purchases or in adapting them to the wants of the market for which they are intended. The holder of this article becomes, by this requisition, the master not only of the price, but of the kind and quality of his merchandise, and his interest will strongly incite him to abuse the power which he feels. He knows full well that the purchaser cannot dispense with this

merchandize, and that sooner or later he must accede to the terms on which it is offered. Should, indeed, the American merchant, from his repugnance to invest his funds in an article forced upon him, loaded with the arbitrary exactions of the seller, refuse for a while to receive it, yet, beholding these funds inactive and wasting on his hands, and his vessel perishing in a foreign port, he must eventually yield to the duress which he suffers.

Such are some of the evils to which the condition in question will expose the American merchant in this country. In the United States, it will be by him still more severely felt.

The overstock of the article forced by this condition on the market there, exceeding the consumption, must necessarily become a drug; and the American merchant, after having taken it here against his will, and paid for it more than its ordinary value, will be compelled in the United States to keep it on hand, or to sacrifice it for the most it will bring. Thus alternately obliged to purchase and to sell under unfavourable circumstances, he will have to add to the losses of the outward voyage the losses on the returns, and the sum of them both may amount to his ruin.

These disasters of the merchant must inevitably impair, if not extinguish the commercial intercourse between the two countries. This intercourse, exposed to unusual perils, and *oppressed with unprecedented burdens*, has already nothing in the voyage hither to tempt the enterprise of mercantile men; and should it be embarrassed with the restrictions of this condition, rendering the homeward voyage also unprofitable, it must undoubtedly cease. It is in vain to expect the continuance of any branch of trade, which, in all its relations, is attended with loss to those who are engaged in it.

I have taken the liberty respectfully to submit these observations to your excellency, not without a hope,

that a consideration of them may lead to a remedy of the evils which they suggest.

I pray your excellency to permit me to renew the assurance, &c. &c.

(Signed) JONA. RUSSELL.

His excellency the Duke Bassano.

No. 9.

[TRANSLATION.]

The minister of foreign relations has the honour to inform Mr. Russell, *chargé des affaires* of the United States, that he will be happy to receive him at any time to-day before two o'clock, if it should be convenient to him.

He begs him to accept the assurance of his perfect consideration.

Paris, 13th July, 1811.

CORRESPONDENCE

OF

GEORGE W. ERVING, ESQUIRE.

Mr. Erving to the Secretary of State.

COPENHAGEN, June 23d, 1811.

SIR,

Having had my audience of his Danish majesty on the 5th instant, on the 6th I addressed to Mr. de Rosenkrantz, minister of state for foreign affairs, a note upon the subject of the American cases generally then under adjudication, by appeal before the high court of admiralty, and on the 7th, a separate note respecting the cases of capture under British convoy. Copy of those two notes, [A & B] and the lists to which they refer, I have the honour herewith to submit. In an interview which I had with the minister on the 8th instant, in the course of conversation he told me, that, as the matter of both those notes was very important, and the latter particularly required a great deal of consideration, he must have them perfectly translated into the Danish language, to be laid before the king; therefore I must not expect very prompt replies, but in the mean time that he was sincerely desirous of doing, and would do every thing in his power to forward our business towards a favourable termination. I suppose that the convoy question may be referred to his majesty's chancery, which is the highest tribunal, and that by which the king is accustomed to declare his will in matters which he does not submit to, or chooses to take out of, the ordinary course of proceedings.

Having now fully informed myself of the business intrusted to me, it is with very great satisfaction that I find myself authorized to state to you, that the evils which our commerce has suffered here, though very considerable, yet have not been quite so extensive as has been generally believed; and you will learn also with very particular pleasure that the depredations of the Danish privateers have been discontinued since my arrival. I have prepared lists and statements with a view to place the whole matter before you, in the most particular, and at the same time most distinct and simple form. These will be completed when I have received returns from Norway and from Holstein, respecting the fate of some few of the cases which occurred in the year 1809. In the mean time I can state the results to be nearly thus:

- Captures in 1809, - - - - 38.
- Condemnations, - - - - 12.
- Captures in Norway in the year 1810, 36.
- Of which are pending in the high court 8, and not one has been finally condemned.
- Captures in Holstein, Sleswick, and the Danish islands in 1810, - - - - 68.
- Condemned, - - - - 22.
- Pending, - - - - 6.
- Convoy cases, year 1810, - 18.
- Condemned, - - - - 8.
- Pending, - - - - 10.
- Total amount of captures in 1809 and 1810, 160.
- Total condemnations, 42, of which 16 were vessels which had broken the embargo or non-intercourse, or are otherwise not genuine American cases.
- Pending cases, including 10 convoy cases, 24.

In this year, the only two vessels which reached these seas from the United States previous to my arrival, were taken (in the beginning of April) and condemned in Norway; two others, just about the time of my arrival, were carried in and are now under trial

there; but since the 11th instant, upwards of forty vessels from the United States have passed through the Sound, and gone up the Baltic, and more or less are every day passing without interruption. The papers of some few have been slightly examined in the subordinate court of Elseneur. There have been tried in the lower prize court of this place, and acquitted without delay, two or three, and one of them with damages against the captors, being the first case in which damages have been given at Copenhagen. Finally, of the 14 cases (not convoy cases) which were pending before the high court on my arrival, four have been acquitted; and though the privateers-men and all concerned with them (and the ramifications of their business are immense) have made every effort to bring on condemnations, yet the tribunal, otherwise perhaps well disposed to proceed, has been steadily held back by the government; and I see the best reason to hope that at least eight of the remaining ten cases will be acquitted. As to the convoy cases my confidence is not so strong, yet even of them I do not despair; the ground on which they stand I am aware is not perfectly solid, yet I did not feel myself authorized to abandon them, and therefore have taken up an argument, which may be difficult, but which I shall go as far as possible in maintaining.

I have had several interviews with Mr. de Rosenkrantz subsequent to that last mentioned, and have acquired additional reasons to hope for the king's perseverance in the change of system which has so happily taken place; but he discourages any expectation of indemnification for the injuries sustained by our commerce under that which now appears to be relinquished. Yesterday he told me very explicitly, that against the definitive decisions of the high court I must not hope for any redress; he trusted that for the future we should not have any cause to complain, but for the past there was no remedy. I thought it not

opportune to enter much into the matter at that time, and therefore contented myself with some general protestations against his doctrines.

I cannot close this letter without acknowledging the very great services of Mr. Isaachson, our consul at Christiansand; you will observe, sir, in the lists which I shall send to you, that of thirty-six vessels carried into the ports of Norway in the year 1810, only four were condemned in the inferior courts of that district; this has been wholly owing to the unwearied exertions of Mr. Isaachson. He found our people in the most distressed situation; entirely friendless, in the hands of, surrounded by, and ready to be sacrificed to the rapacity of, the privateers-men and their connections: he volunteered in their service, he boldly opposed himself to the host of their oppressors; he made each man's cause his own; he provided for every man's wants; in short, his intrepidity and independence, and disinterestedness of character, his constant zeal and industry, saved them from ruin, and, with gratitude very honourable to themselves, they never cease to praise him.

With the most perfect respect and consideration, I have the honour to be, Sir, your most obedient servant,

GEORGE W. ERVING.

To the honourable Secretary of State.

A.

Mr. Erving to Mr. de Rosenkrantz.

COPENHAGEN, June 6th, 1811.

SIR,

It was under the fullest conviction and the strongest sense of the injustice which has prevailed

in the sentences of the Danish tribunals on cases of American capture, as well as an anxiety immediately to arrest the course of those excesses on the part of the privateers too much countenanced by such decisions, which are laying waste the property of American citizens, that I ventured on the 31st ult. and on the 2d inst. to request that the proceedings of the tribunals should be suspended, until having had the honour of presenting my credentials to his majesty, I should be enabled to enter into regular communication with your excellency.

In this first formal address to you upon the subject of the reclamations with which I am charged, it is incumbent upon me to express the extreme surprise and concern with which my government has seen the property of its innocent citizens, whilst employed in fair and legal commerce, ravaged by the cruizers of a nation between which and the United States the most perfect harmony has always hitherto subsisted; against which they have never heretofore found any cause of dispute or any ground of offence; and to which they felt themselves attached not merely by the ordinary ties of reciprocal good offices, but by a common interest in the defence and preservation of those neutral rights, which have so much contributed to the political importance of Denmark, by which her prosperity has been so greatly promoted, and which formerly foremost amongst nations she has so magnanimously and successfully contended for. But at the same time that I make this reflection, so necessary and so obvious, I must also say, that the president retains an entire confidence in the personal good dispositions of his majesty, in his steady adherence to those great and liberal principles and to those just political views which so eminently distinguish his character; and the president assures himself that it is only necessary that his majesty should be made acquainted with the nature and extent of the injuries

which the rights of the United States, as a neutral nation, and the property of their citizens, have suffered and are still exposed to, to induce him to apply an immediate and an adequate remedy to the evils complained of. His majesty, on his part, cannot fail to feel that confidence in the correct views and honourable intentions of the United States, which their uniform conduct in all their negotiations and transactions with other powers has so justly entitled them to; nor can he be indifferent when the friendly relations and mutual good dispositions which have hitherto so invariably subsisted between the two countries, and which it is so much the interest of each to maintain, are in question.

Animated by the most just and friendly dispositions, the American government, whilst it resists all aggressions on its neutral rights, and will never cease to oppose all violations of the public law which may offend them, solicitously avoids any interference with the rights of others; nor will it admit, under cover of its name and authority, any practices which may have that tendency: it has therefore seen with the most indignant sensibility various instances of the prostitution of its flag by unprincipled adventurers in Europe; and I have it in express command to assure his majesty of its determination to discountenance by all practicable means such proceedings, and of its sincere disposition to co-operate with his majesty in detecting and punishing all similar frauds and impostures.

Your excellency will perceive in the frankness of these observations, and in the loyalty of this declaration, the true character of the American government; they will also, I trust, strengthen my title to that confidence on the part of his majesty, which it is at once my duty and my desire to merit.

To carry into effect this twofold purpose of my government; to protect the property of its citizens, and

to cast off from any reliance on its protection, those spurious and fraudulent cases, (if any such actually exist) which have injured the character of the American trade and jeopardized the interests of American citizens, I will enter into candid explanations with your excellency upon all the questions which may arise on the cases now pending; so as to establish the *bona fide* character of the vessels under adjudication, and thus remove from before his majesty every obstacle to that course of justice which he is always desirous to observe, and to a manifestation of the amicable and conciliatory feelings towards the United States which it is confided prevail in his mind.

I have the honour herewith to transmit to your excellency two lists, containing together 28 cases of American capture, being those now actually pending before the supreme court of admiralty on appeal, or waiting for his majesty's decision. The list No. 1, comprising 12 of the whole number, are "convoy cases," that is, cases in which no question has been raised as to the genuine character of the vessels, but wherein the decision rests upon the clause "d," of the 11th article of the royal instructions of March 10th, 1810, declaring as a cause of condemnation—"the making use of English convoy." I stated to your excellency in conversation, as well as in the note which I took the liberty of addressing to you on the 2d instant, that it would be my duty to object to the principle assumed in that declaration. I trust that I shall be able to shew you that it is entirely novel, that it has not any foundation in public law, and that it has not even such sanction as might be supposed derivable from the practice of other nations. Certainly much effort will not be necessary to prove that it is entirely repugnant to the broad ground of neutral right, formerly occupied and firmly maintained by Denmark herself; but upon this point I propose forthwith to address to your excellency a sepa-

rate note; in the present, I will confine myself to observations on the cases (16 in number) mentioned in the list No. 2.

With respect to the "Egeria," captain Law, I send to your excellency a separate note in reply to that with which you honoured me on the 2d instant. That case must now stand so perfectly clear, that I am sure I need not trouble you with any additional remark on it.

In the two cases, viz. the "Nimrod" and "Richmond," the sole objection made is to the French certificates of origin which they had on board; these are presumed to be forgeries, upon a supposition that at the time they bear date, the French consuls in the United States had ceased to issue such certificates. Now the cases must be relieved from that objection, and the question which has been raised upon French certificates of origin be put at rest for ever, by the facts which appear in the correspondence between the secretary of state of the United States and general Turreau the French minister, copy of which I have herewith the honour to inclose [No. 3]. Your excellency will observe, that in general Turreau's letter of December 12th, replying to the secretary's letter of November 28th, it is expressly and unequivocally stated that the French consuls in America "had always delivered certificates of origin to American vessels for the ports of France," and had also "*delivered them to vessels destined to neutral or allied ports*" by the authority of the French government; and that it was only by the United States ship "Hornet," which arrived in America on the 13th of November, 1810, that the French consuls received orders to discontinue the granting of such certificates to vessels bound to other ports than those of France. Your excellency will also perceive, in the secretary of state's reply of December 18th, how important this explanation was deemed by the president in its application.

to the vessels of the United States taken by Danish cruisers upon the ground of their having on board such certificates.

Of the thirteen remaining cases in the list No. 2, eight have been acquitted in the subordinate courts of Norway and at Flensburg, and are now depending in the high court on the appeals of the captors; and five have been condemned in the subordinate courts, and are now depending in the high court on the appeals of the American masters.

I annex to this note a summary of each class (A and B), shewing the nature of the questions and objections which have arisen upon the several cases; and I do confide, that if your excellency will be pleased to lay it before the king, that his majesty will become immediately sensible to the undue proceedings of his tribunals, and will readily apply his royal authority to administer prompt and efficacious redress for the injuries and vexations which the commerce of the United States and its citizens are suffering.

I can only add, that in all cases where any doubt shall arise respecting the authenticity of American documents, I have it fully in my power to establish the truth: and I beg leave to re-assure your excellency that on this point, as on every other, you shall not experience any proceedings on my part, which will not conform to the strict honour and good faith, to the just and liberal sentiments which characterize, and to the friendly and conciliatory dispositions towards his majesty, which influence the government, which I have the honour to represent.

I offer to your excellency, assurances of the very distinguished respect and consideration with which I am always, &c.

G. W. ERVING.

To Mr. de Rosenkrantz.

B.

Mr. Erving to M. de Rosenkrantz.

COPENHAGEN, June 7th, 1811.

SIR,

With my note of yesterday, I transmitted to your excellency a list [No. 1.] of the "convoy cases," twelve in number: the two last in that list are not depending on appeal before the high court, as is mentioned in a memorandum opposite to their names; the first eight vessels of the remaining ten were bound immediately from Petersburg and Cronstadt to the U. States; they had all paid their Sound dues, and several of them had been examined before the Danish marine tribunals on entering the Baltic. . . . and they were all arrested in going out by a British force, and compelled to join convoy. When that convoy was attacked by his majesty's gun-brigs, the Americans, not conscious of any illegality in the nature of their voyages, or of any irregularity in their own conduct, made not any efforts to escape: they were captured and brought into port. No question has been made as to the genuine American character of the vessels in question, but they have been condemned under the authority of the article "d" in the 11th clause of his majesty's instructions for privateers, issued on the 10th of March, 1810, which declares to be good prize "all vessels which have made use of British convoy, either in the Atlantic or the Baltic." At the time of this declaration, these vessels were in Russia, on the point of sailing, and wholly ignorant of it.

This is a brief history of the "convoy cases." It is now my duty to protest against the principle, assumed in the instruction referred to, upon which they have been condemned. I shall endeavour to show to your excellency, that it is wholly new; not founded

in, or supported by, any reasoning to be derived from the law of nations...not even countenanced by precedents...and as wholly repugnant to the doctrines heretofore held by Denmark itself, as it is to the rights and to the interests of the United States.

That the belligerent has a right to ascertain the neutrality of vessels which he may meet with at sea, and therefore, under certain suspicious circumstances, to bring such vessels into port for examination, I am not disposed to deny: it may also be allowed that the being found under enemy's convoy does afford such reasonable ground of suspicion, against the vessels so found, as to authorize their being sent into port for examination. But this is the full extent of the belligerent right on this point; the examination had, and the vessels being found *bona fide* neutral, must be acquitted. To say that the neutral shall be condemned on the *mere fact* that he was found under enemy's convoy, is to impose upon him a necessity of sailing without protection even against his own separate enemies; for the case might well happen, indeed has happened, that tho' neutral with regard to the belligerent powers, he has had an enemy against whom either of the belligerents was disposed to protect him. Of such protection the American commerce has often availed itself, during the war between the United States and the Barbary powers; nor was it ever supposed by either of the great belligerent powers, that such commerce, so protected by its enemy, had thus become liable to capture and confiscation. The case might also occur, that of two allied belligerent powers, a third power should be enemy as to one and neutral as to the other; in that case, his seeking the protection of the common enemy of these allied powers, against that of them to which he was enemy, could not subject him to capture and confiscation by the other allied power, with respect to which he was neutral; his right, in either of these and in all cases, to protect

himself against his enemy by availing himself of whatever convoy offers, is unquestionable. I state these arguments against the *broad ground* taken in the royal instructions above quoted. But it will be said that the belligerent having also an unquestionable right to ascertain the neutrality of vessels, and belligerent rights being paramount to neutral rights where the two happen to be in collision, hence the attempt of the neutral to deprive the belligerent of his right, by putting himself under convoy, forms of itself a ground of capture and confiscation. To this I answer,

Firstly, that the belligerent rights, where they come into collision with those of neutrals, are not to be deemed in *all cases* paramount; and that nothing can establish such a general rule but force, which is not law or justice.

Secondly: That no presumption necessarily arises against the neutral, from the mere circumstance of his being found under enemies' convoy; but that this point will depend upon the peculiar circumstance of each case.

Thirdly: That where the belligerent and neutral rights conflict, all other circumstances being equal, the plea of necessity ought to decide the question in favour of the neutral. In the case supposed, the belligerent is seeking the mere exercise of a right, but the neutral is occupied in his self-preservation.

Fourthly: Superadded to this reason in favour of the neutral right, is one springing out of the immutable principles of equity; for since, according to modern practice, the neutral has no representative in the judicature by which his cause is tried...that it is no longer an umpirage, or a court of arbitration...so his claim to a favourable leaning towards his right, in all questionable cases, is very much strengthened.

But it is also proper to inquire, whether the vessels in question did in fact put themselves under convoy with a view to avoid examination by Danish cruisers.

Now it appears, in the first place, that they did not seek convoy for any purpose, but that they were forced into it. Apart, however, from that question, there were not any Danish laws or ordinances, which they knew of, subjecting them to capture; nor could they apprehend or anticipate any such; the less, as they had previously passed through the Sound, or Belt, in safety, and without convoy; hence they had not any motive to seek convoy as a protection against Danish cruizers. They had, indeed, other inducements to put themselves under convoy; the decrees of his majesty the emperor of France (since, happily for the harmony between the United States and France, repealed) were then in force: that system, working against the English orders in council, produced such a state of things with regard to the commerce of America, that scarcely one of its ships could move on the face of the ocean without being exposed, under this unfortunate co-operation of hostile systems, to capture and confiscation: hence it is not surprising if American vessels have, from time to time, been terrified into the convoy, now of one party, now of the other. But had this happened in the cases before us, yet it would not have formed a just ground of capture and confiscation; for, the merits or demerits of the Berlin and Milan decrees out of the question, those decrees have not been adopted by Denmark: indeed, at the time the vessels were taken, his majesty had not assumed any course, with respect to the American commerce, from which evil was to be apprehended: hence, I beg leave to repeat, that the vessels in question cannot be presumed to have sought protection under British convoy for the purpose of avoiding his cruizers. But, if the contrary had been proved, if it stood confessed that they had sought convoy against Danish cruizers; in that case they would have been liable to capture certainly, but it is equally certain that they would not have been liable to condemnation. I must again totally deny that

the rule laid down in the article of the royal instructions above cited, is supported by any principle to be found in the law, and I can confidently ask your excellency to show me any authorities in its favour. If the writers be silent on the subject, then their silence is to be construed favourably for the neutral; it supposes that his right to sail under convoy, in all cases, is indisputable: what is not expressed against this claim, cannot be implied; but, I will add, that all the analogies to be drawn from the law are in favour of the neutral. In this view, the rule laid down in the instructions, by its sweeping latitude, forms its own condemnation; for it would comprise not only vessels which might accidentally be within sight of, or at any indefinite distance from, an enemy's convoy, but vessels found in an enemy's harbour under cover of his guns. But the law says, that neutral goods, so found under his forts, within his territory, or even on board his vessels at sea—which is to be as immediately and totally under his protection as is possible—that these are not liable to confiscation, but shall be restored to the neutral owners. The doctrine laid down by Grotius in the "*de jure belli ac pacis*" on this point, has never been refuted, but has, on the contrary, been adopted by subsequent writers: treaties, indeed, may have said otherwise, but treaties change not the law, they bind only the parties to them. I may equally ask your excellency to show me examples in the practice of nations, countenancing the rule laid down in the royal order; and I can quote, in favour of the neutral right, the example of England—a power which neither your excellency or myself are disposed to extol for her moderation in the exercise of her belligerent rights, or for any dispositions which she has manifested favourable to those of neutrals—England herself has never gone to the extent of condemning vessels upon the mere ground of their having been taken under enemies' convoy, but she has captured them in that situation and acquitted them.

I might occupy your excellency's attention by expatiating on the conduct of Denmark in former times, by carrying back your view to a consideration of that great system of neutral rights, which she so boldly adopted and so ably supported, in the year 1780—which are again recognized in her convention with Sweden of 1794—which she has subsequently co-operated with Russia to establish, and the leading feature of which still appears in the very royal instructions on which I have been commenting: but it would be an ungrateful task, and not necessary to be undertaken, because the mere mention of the subject carries conviction to the mind on the point to which I would apply it, and because, on every other, I have already said more than enough to establish the chief position with which I began: viz. that nothing to be found in the law will authorize the condemnation of neutral property upon the mere fact of its being found under enemies' convoy, and that therefore on due proof of its neutrality, it must be acquitted.

I consider it to be a propitious circumstance, that in acting upon this very important question, his majesty's government is unembarrassed by the claims of privateers-men, and that the cases of these vessels are thus presented in the plainest form, unmixed with any extraneous matter, the captures having been made by public ships, leaving the fullest scope to the magnanimity and justice of his majesty's disposition.

I have the honour, &c.
G. W. ERVING.

To his excellency M. de Rosenkrantz,
first minister of state, &c. &c. &c.

0122

(No. 1.)

LIST OF AMERICAN VESSELS taken in company with the remainder of a fleet under convoy of a British gun-brig, and sent into Christiansand by five Danish gun-brigs, in July, 1810.

<i>Vessels and Names.</i>	<i>Captains.</i>	<i>Where from.</i>	<i>Where bound.</i>	<i>Where owned.</i>
Schooner Annawan,	Donaldson,	St. Petersburg,	Philadelphia,	Philadelphia,
Do. Hesper,	Cushings,	Do.	Boston,	Newburyport,
Do. Hope,	Rhea,	Do.	Providence, R. I.	Providence,
Do. Janus,	Gawn,	Do.	Newburyport,	Newburyport,
Brig Mary,	Ropes,	Do.	Salem,	Salem,
Brig Elizabeth,	Campbell,	Do.	Philadelphia,	Philadelphia,
Do. Hope,	Meik,	Do.	Marblehead,	Marblehead,
Do. Polly,	Graves,	Do.	Do.	Do.
Schooner Rebecca,	Meik,	Gothenburg,	Do.	Do.
Do. Iris,	Russel,	Do.	Salem,	Salem,
Brig Sophia,	M'Intire,	Do.	Liverpool,	These vessels are American, but the cargoes on freight supposed for English account; no appeal declared for either vessel.
Brig Eliza,	Luffkin,	Do.	Do.	

H H

(No. 2.)
**LIST OF AMERICAN CASES now pending before the High Court of Admiralty
at Copenhagen, June 1st, 1811.**

Date of Capture.	Vessels and Names.	Captains.	Where owned.	Where from.	Where bound.	Where detained.
1810.						
May 14,	Schooner Egeria,	Law,	New York,	New York,	St. Petersburg,	Fahrsund.
June 5,	Brig Minerva,	Baker,	Portland,	Portland,	Do.	Do.
2,	Schooner Oscar,	Cunningham,	Baltimore,	Baltimore,	Gothenburgh,	Heckiford.
July 31,	Do. Minerva Smyth,	Mann,	Philadelphia,	Philadelphia,	Kiel,	Kiel.
	Do. Fair Trader,	Craig,	Do.	Do.	Do.	Do.
August 18,	Brig Ariel,	Butler,	Do.	Do.	Do.	Do.
8,	Schooner Resolution,	Eldridge,	New York,	New York,	Gothenburgh,	Christiansand.
	Brig Nimrod,	Smith,	Do.	Do.	Elseneur,	Aalborg.
October	Schooner William and Jane,	Bunker,	Do.	Do.	Russia,	Callenbourg.
29,	Brig Richmond,	Jervis,	Philadelphia,	Philadelphia,	Gothenburgh,	Fahrsund.
	Schooner Pittsburg,	Yardsley,	Do.	Do.	Do.	Heckiford.
November,	Do. Maria Theresa,	Phelps,	New York,	New York,	Kiel,	Fahrsund.
December,	Do. Amiable Matilda,	Hague,	Do.	Do.	Do.	Do.
1811.	Do. Washington,	Almy,	Do.	Do.	Russia,	Callenbourg.
April 1,	Brig Rachel,	Joseph,	Salen,	Boston,	Do.	Copenhagen.
	Schooner Charlotte,	Pierce,	Boston,	Do.	Stockholm,	Isle of Bornholm.

Mr. Erving to the Secretary of State.

COPENHAGEN, July 15, 1811.

SIR,

I have the honour herewith to inclose copies of my correspondence with this government since my last communication, viz.

No. 1. Mr. de Rosenkrantz his note of June 28th, in reply to mine of the 6th and 7th of June.

No. 2. My note to Mr. Rosenkrantz, of June 30th, in reply to the above.

No. 3. Mr. de Rosenkrantz his note of July 9th, in reply to mine of the 30th of June.

On the 28th of June, I waited upon the minister for the purpose of conversing with him on such part of his note of that date as respected the convoy cases, but did not obtain any thing more satisfactory than what is contained in it. On the 29th he went into the country, from whence he did not return until the morning of the 2nd instant: in the mean time the cases were pressed forward in the high court, and it was determined to condemn four of them instantly, as though it were to preclude the possibility of any further remonstrance on my part. I had received an intimation of this intention on the 30th of June, and then wrote to Mr. de Rosenkrantz unofficially, hoping that he would be able to arrest the progress of the tribunal. On the 1st instant, having ascertained that intention, I again addressed him in the same way, and in terms rather more forcible; that communication, tho' unofficial, Mr. de Rosenkrantz, actuated by the most friendly motives, immediately sent to his majesty; yet it failed of its intended effect, and on the 2d instant four of the cases were condemned.

On receipt of the minister's last note (on the 9th), I again waited on him, and warmly remonstrated

against this precipitate procedure, and the determination taken to condemn all the convoy cases without admitting any justificatory pleas; he reverted to whatever is found in his written communications to support the determination, and yet seemed to regret that it had been taken; but withal was unable to effect, and did not afford the least encouragement to hope for any modification of it; nevertheless some of these are cases of great hardship, and I have concluded not to relax my efforts in their favour, whilst any one of them remains uncondemned.

In every other respect the position of our affairs is not unsatisfactory; the privateers are discouraged, and nearly all our vessels pass without interruption. I transmit herewith lists and statements, as correct as it is possible to make them, which place in the most distinct point of view whatever has passed in relation to, and the actual state of the business with which I am charged.

With the most perfect respect and consideration,

Sir,

Your very obedient servant,

GEORGE W. ERVING.

To the Secretary of State.

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No. 1.

Translation of a note from Count Rosenkrantz to Mr. Erving, dated

28th June, 1811.

The undersigned, minister of state, chief of the department of foreign affairs, has laid before the

king, his master, the notes which Mr. Erving, special minister from the United States of America, addressed to him on the 7th current. He is charged to assure this minister, that his majesty has seen with great satisfaction, that the president of the United States recognizes the reciprocal utility of the relations which unite the two governments.

The king having always had it at heart to maintain a good understanding with the American government, would be much pained if he could be convinced that the subjects of the United States, who have carried on commerce or navigation either in the ports of his majesty or in the waters which wash the shores of his states, and in the adjoining latitudes, have had just cause to complain of the treatment which they have met with here in consequence of the privateering which his majesty has been forced to authorize by the war into which the Danish nation have been drawn by the government of Great Britain. His majesty is persuaded that the vessels captured under the flag of the United States, have not been brought into his ports unless there was reason to suppose that the vessel was not duly authorized to carry that flag, or that she was engaged in an illicit trade. The ordinance as to privateering, which was published on the 28th of March of the last year, prescribed to those fitting out privateers, the conduct they were to pursue, and it also fixed the responsibility to which they were subjected. The high court of admiralty watches over the execution of this ordinance, which has met the approbation of all the governments of Europe.

If there have been many vessels under the American flag brought in, it is because there have been a great number of them furnished with false papers, that evidently carried on a simulated and justly prohibited commerce. It was naturally very difficult for the courts to distinguish at first, the navigation which

was fair, and in rule (*en règle*) from that which was devoted to the service of the enemy of Denmark. The conduct of the navigators who followed the latter, compromitted those who had nothing to reproach themselves with ; but in every case where the high court of admiralty discovered that the papers on board proved that the vessel was really an American, and that the captain had not made an improper use of them, to cover the property of the enemy, passing it off as American, the vessels and the cargoes have been released. There was one cause of a seizure and of process against American vessels, which in a certain degree applied to those that produced false papers, or to those in whose documents there were irregularities. This was the certificates of origin granted to American vessels by the French consuls residing in the ports of the United States. The French government caused it to be officially declared to the court of Copenhagen, on the 22d of September, that the consuls of France would not grant any more certificates of origin, and that every American vessel that had them on board, had so far false papers, and was to be treated accordingly. Taking into view the strict and happy union which subsisted between the king and his majesty the emperor of the French, his majesty could not but pay attention to this communication. He therefore ordered that the certificates of origin, which had been thus declared to be all false, should be considered by the prize courts as a false document, which would authorize the condemnation of the vessel that had them on board. The undersigned having been afterwards informed by the *chargé des affaires* of his majesty in the United States, and more recently by Mr. Erving, that the consuls of France in the United States had not received the order of their government to abstain from granting these certificates, until the 13th of November of last

year, by the *Hornet*, and that they had not ceased granting them until after that period, and having reported this to his majesty, he immediately directed that the certificates in question should no longer be injurious to the vessels that were furnished with them, provided that these certificates bore date prior to the 13th of November of last year.

The king has not confined himself to giving this proof of his attention to the remonstrance made to him on the part of the government of the United States. His majesty has also, having in view the representations made by the special minister of the United States, just ordered that the cases of the following vessels, under the American flag, brought into the ports of his dominion, viz.

- Minerva, Captain Baker,
- Resolution, Eldridge,
- Pittsburg, Yardsley,
- Maria Theresa, Phelps,
- Amiable Matilda, Hague,
- Minerva, Smith,

should be reported to him by his chancery before the definitive sentence was pronounced, in case the supreme court of admiralty should find that the charges, alleged by the captors, were so well founded as to make it probable that the sentence would be unfavourable to the vessels. Mr. Erving will be pleased to observe, that these are vessels acquitted in the first instance by the prize courts, and in whose cases appeals have been made by the captors. His majesty has also determined to cause to be reported to him in the same manner the cases of the following vessels :

- Oscar, Captain Cunningham,
- William and Jane, Bunker,
- Washington, Almy,
- Rachel, Joseph,
- Charlotte, Pierce,

in which the masters of the vessels have had recourse to an appeal to the decision of the supreme court. The undersigned flatters himself that Mr. Erving will find in this compliance of the king his master, an evident proof of the desire of his majesty to see that the most exact justice may be observed towards the American vessels brought into the Danish ports.

His majesty, who has seen with great satisfaction that the president of the United States properly appreciates the sentiments of justice and equity which animate him, feels gratified in manifesting to him, that he desires to preserve and to cultivate on his part, the relations of good understanding and of amity, which have always subsisted between the Danish government and that of the United States of America. It is enjoined on the undersigned to charge Mr. Erving with assuring his government, that the intentions of the king his master are invariable in this respect.

In regard to vessels under the American flag, arrested at sea by Danish cruizers, and which were found under the convoy of British ships of war, Mr. Erving will permit the undersigned to have the honour of observing to him, that when the fact is fully proven, the searching after, and the use made of the protection of the enemies of Denmark, in the seas which wash the shores of his majesty's dominions, or in those which environ them, cannot be viewed by the Danish government, but as having taken from these vessels their original character of neutrals. But the king, not having been willing that the courts should attribute to vessels under the American flag, the having been placed (*de s'être mis*) under the protection of his enemies, unless the fact was proven, has very recently directed, that proofs the most evident be required to establish the fact, that a vessel under the American flag had been (*ait été*) under English convoy. The undersigned cannot but urge in favour

of the principle established by the 11th article of the ordinance for privateering; the argument that he who causes himself to be protected by that act, ranges himself on the side of the protector, and thus puts himself in opposition to the enemy of the protector, and evidently renounces the advantages attached to the character of friend to him against whom he seeks the protection. If Denmark should abandon this principle, the navigators of all nations would find their account in carrying on the commerce of Great Britain under the protection of English ships of war, without running any risque. We every day see that this is done, the Danish government not being able to place in the way of it sufficient obstacles. The undersigned will add a single observation which will serve to convince Mr. Erving, that this principle is, in the view of his majesty, as just as it is invariable. It is that every Danish vessel which should make use of English convoy is condemned, if she is convicted of it, in like manner as a foreign vessel. It is but too well known that in all times, during maritime wars, neutral navigation has been exposed to embarrassments and delays. The Danish navigation has had experience of it in its time. It is therefore that the king has established rules for privateering, which place the navigation truly neutral, under cover from vexations. His majesty would equally have wished entirely to have prevented captured vessels from experiencing delays of any importance, when it was found that they had their papers on board in order, (*en règle*) and that they had not improperly used them to carry on a simulated commerce, on account of the enemy of Denmark. He is convinced that he has taken for this purpose all the measures in his power, and he is resolved carefully to watch over their execution. These measures and the will (*volonté*) of the king, offer sure guarantees to the commerce

of the United States, that the vessels under their flag will be able to navigate in the seas and waters visited by the Danish cruizers, without any risque of being molested by them or brought in, if their papers are in order (*en règle*), and there is no reason to suppose that they have been improperly used. The vessel which is destined to carry into any port whatever, produce and merchandise, which are not admitted into that port according to the laws of the state to which it belongs, will not be considered as in rule (*en règle*); and the navigators who may aim at employing their vessels in this way, will only have to blame themselves if their enterprise leads to their injury.

The undersigned, in acquitting himself, as he has just done, of the orders of his sovereign, cannot deprive himself of the honour of again reminding Mr. Erving, that the navigation and the commerce of the citizens of the United States found a reception and an outlet, for the productions of their country, in the ports under the dominion of the king of Denmark, at a time when they did not enjoy the same advantages in the ports of the greater part of the states of Europe. This circumstance will sufficiently prove to the American government, that that of Denmark is fully aware of the reciprocal utility of the relations of commerce and of good understanding between the two nations.

The undersigned has the honour of renewing to Mr. Erving, the assurance of his high consideration.

(Signed) **ROSENKRANTZ.**

G. W. Erving, esq. &c.

No. 2.

Mr. Erving to Mr. de Rosenkrantz.

COPENHAGEN, June 30, 1811.

The undersigned, special minister of the United States of America, has received the note which his excellency M. de Rosenkrantz, first minister of state and chief of the department of foreign affairs, was pleased to address to him on the 28th instant, in reply to the representations made by the undersigned on the 6th and 7th instant, respecting the reclamations with which he is charged. He shall immediately transmit his excellency's said note to the government of the United States, and is persuaded that the president will receive with great satisfaction, the reciprocation which his majesty has therein offered of the friendly sentiments which the undersigned was ordered to express: these dispositions and the just and liberal views of his majesty, with regard to the neutral commerce of the United States, as declared in his excellency's note, since they leave not the least doubt but that his majesty has been wholly unaware of the great injuries which that commerce has lately sustained within his dominions, afford to the undersigned the happy presage of a favourable termination to the business with which he is entrusted, and a sure pledge that the harmony which has hitherto always subsisted between the two governments, will still be maintained in its full extent and perfection.

Thus assured of meeting on the part of his majesty's government with no dispositions but those which are of the most just and friendly character, it is with more than ordinary pleasure that the undersigned proceeds in the performance of his duty.

His excellency the minister of state, after showing the causes which have occasioned the capture of so many vessels under the American flag, observes, that in all cases where the supreme tribunal of admiralty has found that the papers on board such vessels prove their American character, and where their neutrality has not been abused by any attempt to cover enemies' property under simulated papers, both vessels and cargoes have been released. Such is undoubtedly the impression on the mind of his majesty, who has been convinced that the inquiries pointed out by his instructions have been conducted with all the impartiality by which those instructions were dictated: but it can be shown in a multiplicity of cases that the high court has entered into matter entirely irrelevant to the object of the instructions; that it has given weight to evidence entirely inadmissible, and has resorted to pretexts for condemnation entirely insufficient: it shall be shown to his majesty, that thus, contrary to his royal intention, a great mass of American property has been unjustly condemned in the high court. . . . whether by a mis-construction or mal-application of his majesty's regulations, the undersigned will not undertake to say. . . . perhaps it may not be important to inquire, since, be the source of this evil what it may, to the royal sense of justice only the injured now have to look, and they look with confidence for redress. The details upon this subject will be voluminous: the undersigned will here point only to one, and that a recent decision (being the first which presents itself), by way of exemplification.

In the case of the American ship "Swift, Champlin." In the high court, on the 11th March, 1811, this ship was condemned, on an allegation that captain Champlin had thrown some papers overboard; which allegation had no better or other support, than the oaths of seven of the privateer's men who captured her. It is to be observed on this sentence,

Firstly, as to the alleged fact. The royal instructions of March, 1810, after stating what shall be deemed causes of condemnation, in the 12th section states what shall be cause of suspicion, and subject vessels to further examination; and in the article "e" specifies the throwing overboard or destroying of papers. This throwing overboard of papers, then, constitutes ground of suspicion only, and authorizes further examination with a view to ascertain whether that fact can implicate the neutral character of the vessel. Now, in the course of the further examination on this trial, the neutrality of the ship and the fairness of her voyage were fully established; the alleged circumstance with respect to her papers therefore remained naked, and unsupported by any sort of ground or pretext for condemnation. . . . and yet she was condemned!!

Secondly, as to the evidence. The American master objected, that it was contrary to all the principles of justice and law to admit the evidence of privateersmen, who were parties interested in his condemnation; but the court decided, that they were not interested, and that their evidence must be admitted! and that the evidence of the crew of the American ship should not be admitted to rebut it!! The American master then went on to show that the witnesses were interested, and produced a contract made between them and the owners of the privateer (the authenticity of which was acknowledged), by which it appeared that the equipage of the privateer were to receive half of the next prize which they might take: still the court determined that they were not interested in the condemnation of this ship, and that their evidence should be admitted!! The American master then went on to prove that it was impossible they should have sworn truly: they had declared that the papers thrown overboard were of the size of about six inches square, and

had been passed through a certain opening in the after-part of the ship; the American master proved, by the examination and declaration of two Danish masters, that the privateers-men could not have seen them dropped into the water, as they had stated; and farther, that the hole pointed out was not large enough for them so to have been passed through: but neither did these proofs produce any effect in favour of the American; he was predestined to condemnation. The court had no disposition to reject the evidence of the privateers-men, though the same privateers-men had produced two other men to swear that they had seen this same ship "Swift" at Liverpool . . . and captain Champlin proved that, one day after the day in which this evidence stated that he was at Liverpool, he spoke his majesty's gun-brig the "Sea-Gull!"

The undersigned trusts that any comment whatever, upon such a sentence, would be entirely superfluous . . . a sentence in direct violation of his majesty's instructions. He will only add, that the property *thus condemned* is valued at 100,000 Spanish dollars! The explanation which the minister of state gives, as to the objection made by the tribunals to French certificates of origin, and the order which his majesty has now been pleased to issue on that subject, though applying only to two of the cases, viz. "Nimrod" and "Richmond," named in the lists transmitted to his excellency on the 6th instant, and both lately acquitted, cannot fail of being satisfactory: but, observing therein that the notification made by the French government was not till the 22d of September, the undersigned cannot refrain from again adverting to the conduct of the high court, which, in a sentence given on the 22d of December, in the case of the "Agent," Row, justified the capture of that ship in the month of June, upon the ground that she had with her papers a French certificate of origin;

and upon that same ground, *and upon that only*, decreed that a sum of 500 rix-dollars should be paid to the captors! Precisely the same decision was given, about the same time, in the case of the "Julian," Abbott.

In the order which his majesty has now issued with respect to the eleven cases pending in the high court, and as specified in the minister of state's note, the undersigned recognizes the determination of his majesty to insure justice to the American claims; and he has the honour to assure his excellency the minister, that the president will receive with peculiar satisfaction the declaration of his majesty accompanying this act, and charging the undersigned to communicate to his government his majesty's invariable disposition to cultivate the good intelligence and friendly intercourse which ought always to subsist between the two countries.

When on every other point there is the pleasing prospect of a perfect accord, it is with regret that the undersigned feels the necessity imposed on him of differing in opinion with his excellency M. de Rosenkrantz on the subject of the convoy cases, and of contesting some of the doctrines which the minister has laid down as applicable to those cases.

His excellency has not thought proper to reply to the reasoning upon which the undersigned based his reclamation, which therefore remains in its entire force; nor has he produced any thing which can be deemed satisfactory in support of the principle assumed in the royal instruction to which that reasoning has been applied. The minister of state has produced, in favour of the principle in question, the single argument, that he who puts himself under the protection of another, does thereby take side with his protector, and renounces the advantages which belong to the quality of friend as to him against whom he seeks

protection. In vain are the books examined to discover the source from which this argument is drawn ; in vain are history and the records of diplomacy resorted to, for authority or for any countenance given to the doctrine which it embraces : but these books and these records, have they lost their title to respect ? have they become a dead letter ? His majesty certainly does not assume to act on principles unknown to them ; to originate a practice at once undefined in its limits and rigorous in its character beyond all precedent ; in hostility also with the ancient doctrines of Denmark, and a stranger to all her maritime codes : so much a stranger as that it is not found even in the royal instructions issued on the 14th September, 1807. His excellency the minister of state supposes an acquiescence in this new rule upon the considerations that it is applied to Danish ships as well as to strangers. Certainly the United States will never dispute the equity or propriety of any law emanating from his majesty's authority and applied to his own subjects ; but it is equally certain that they found their rights upon the public law only, and cannot consent to place them at the disposition of any partial authority, or to limit them by the convenience of the belligerent powers. It is not readily conceived how Danish ships or ships of the allies of Denmark, being subject to the capture of the enemy, can be found under his convoy ; vessels carrying such flags, and so found, cannot but be enemy's property ; but if by whatever means his majesty's subjects do put themselves under enemy's convoy, they are doubtless guilty of a high crime, and richly merit all the punishment which his laws inflict ; but is the same rule to be applied to the property and to the citizens of a neutral and independent power ?

Thus much the undersigned has found it his duty to say in addition to what has before been stated and

remains unanswered respecting the principle assumed in the royal instruction of March, 1810 : but he finds one part of the minister's note which, as he apprehends, goes much beyond that instruction, and which would preclude the neutral from any kind of justification for being found under enemy's convoy.

It were a gross dereliction of the interests of the United States, should the undersigned leave the least room for his excellency to suppose that the American government will accede to the fiction propounded by his excellency, viz : " that neutral vessels found under enemy's convoy have *eo facto* lost their original quality of neutrals." This idea was certainly more fully and distinctly expressed in conversation ; and seeing that there are parts of his excellency's note which favour a different conclusion, he eagerly seizes the hope that it is not really intended to carry the doctrine to such an extent ; yet as in a matter of such importance nothing should remain equivocal, the undersigned, desirous of laying it before the president in the most distinct manner, requests that he may be favoured with an explanation as to whatever is susceptible of mis-construction.

His excellency, pursuing the idea above cited in mentioning the instructions which his majesty has now given to his tribunals to direct their examinations on American vessels found under enemy's convoy, says, "*que les preuves les plus évidentes seront requises pour prouver qu'un navire sous pavillon Américain ait été sous convoi Anglois.*" Yet it is hoped that the words *ait été* are not intended to be connected with what is above quoted, but rather that they are to be governed by the sense of the words "*s'être mis sous la protection,*" found in the same sentence ; by the words "*la recherche et l'usage faites,*" in the paragraph preceding ; by the words "*se fait protéger,*" which will bear the same construction in the

paragraph following; and finally, by the words in the article "d," clause 11th, of the royal instructions of March 1810, construed "using convoy," which must be supposed to mean a voluntary use of convoy, and cannot intend vessels which have been forced into or have accidentally found themselves in convoy. For, to condemn vessels under such unfortunate circumstances! is that the course of a power friendly to the neutral? This reflection so strengthens the above construction of the words used in the royal order of March 10th, as not to leave a possibility of supposing that his majesty intended that such innocent vessels should be affected by it.

The undersigned cannot conclude this note without expressing his full confidence that the friendly dispositions professed by his majesty will dispose him so to regulate the conduct of his tribunals upon the convoy cases as to satisfy the just claims of the United States, or without assuring his excellency the minister of state, in reply to the last observation in his note, that the American government is also fully sensible to the value of the commercial and friendly relations which have always subsisted between the two countries.

No. 3.

Count Rosenkrantz to Mr. Erving, dated

COPENHAGEN, 9th July, 1811.

The undersigned, minister of state and chief of the department of foreign affairs, has seen with very particular satisfaction from the note of Mr. Erving, minister of the United States of America, un-

der date of the 30th ultimo, that he was not disappointed in his expectation of finding that Mr. Erving would acknowledge the sentiments of justice and equity which animate the king his master, as well as the desire of his majesty to maintain a good understanding with the government of the United States. But it is not without pain that the same minister of state sees that Mr. Erving remonstrates against the sentences already definitively pronounced.— It is with the same sentiment that the undersigned finds himself charged by the orders of his sovereign to repeat to the minister of the United States, that his majesty cannot make any general change in the regulations of the ordinance for privateering, issued on the 28th March of last year, and in consequence none in the 11th, which under the letter "d" declares that neutral vessels, that make use of the convoy or of the protection of the vessels of war of Great Britain, are to be considered as good prize if the Danish privateers capture them under convoy. The undersigned must repeat, that the rule laid down by that article of the ordinance, will be followed by the prize courts whenever the proofs are clear, that the vessels under American flags as well as those of other nations are found in a convoy under the protection of the enemies of Denmark. He does not wish to repeat here what he had the honour of stating on this subject in his preceding note; but he begs Mr. Erving to be so good as to observe to his government, that none of the powers of Europe have called in question the justice of this principle.

Mr. Erving has observed, that notwithstanding the Danish courts had not been directed to consider the certificates of origin granted by the French consuls in the ports of America as false until after the 22d September of last year, there has nevertheless been imposed upon two vessels acquitted by the supreme

court of admiralty, a fine solely for having these certificates on board, as Mr. Erving has been informed. The undersigned, although he is not informed of these facts, will not call in question the assertion of the minister of the United States; and he must consequently suppose that the suspicion of the legality of these certificates was excited by the public declaration which was before made on the part of the French government, that the consuls of France were not authorized to grant the certificates in question, and that for that reason the courts have decided that the captors were justified in bringing in the vessels for examination.

(Signed) ROSENKRANTZ,

Honourable Mr. Erving, &c. &c.

