



# DOCUMENTS

ACCOMPANYING

THE MESSAGE OF THE PRESIDENT

OF THE

*UNITED STATES,*

TO

THE TWO HOUSES OF CONGRESS,

AT THE

OPENING OF THE SECOND SESSION OF THE ELEVENTH  
CONGRESS.

---

NOVEMBER 29th, 1809.

*Read, and referred to a Committee of the whole  
House on the state of the Union.*

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WASHINGTON CITY:

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1809.



## DOCUMENTS, &c.

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(CIRCULAR.)

*Treasury Department, August 9th, 1809,*

SIR,

You will herewith receive the copy of a proclamation of the President of the United States, announcing that certain British orders in Council were not withdrawn on the 10th day of June last, and consequently that the trade renewable, on the event of the said orders being withdrawn, is to be considered as under the operation of the several acts by which such trade was suspended.

The act "to amend and continue in force certain parts of the act entitled "An act to interdict the commercial intercourse between the United States and Great Britain and France and their dependencies, and for other purposes," passed on the 28th day of June, is therefore in every respect applicable to Great Britain and her dependencies, as well as to France and her dependencies; any thing in my circular of 29th June last, to the contrary notwithstanding.

It results that from the receipt of this, you must in every instance, except as hereinafter expressed, refuse clearances for British ports, requiring, as usual, bonds from all vessels bound to permitted ports, in the manner provided by the third section of the act abovementioned. But as many British vessels have or may come into the ports of the United States in consequence of the President's

proclamation of the 19th of April last, he directs that you will permit such British vessels to depart without giving bond, either in ballast, or with the cargo on board when notified of the enclosed proclamation: it being however understood that this indulgence shall not be extended to any other vessels than such as are now in the ports of the United States, or such as may hereafter arrive, having sailed from a foreign port before information of the enclosed proclamation shall have been received at such port.

The President also directs, that until a decision from Congress on that unexpected point shall have been obtained, or until otherwise instructed, seizures or prosecutions for supposed contraventions of either the abovementioned act or of the non-intercourse act of 1st March last, arising from acts which would, in conformity with his proclamation of the 19th of April last, have been considered as lawful, shall be suspended in the following cases, viz.

1. All vessels which have entered a British port since the 10th of June last, or which may hereafter enter such port, having sailed for the same, before information of the enclosed proclamation had been received at the port of departure; so far as relates to any forfeiture or penalty which may accrue or have accrued by reason of their having thus entered a British port.

2. All vessels which have arrived, either from British ports or with British merchandise in the United States subsequent to the 10th of June last; and also all vessels which may hereafter thus arrive, having sailed for the United States, before information of the enclosed proclamation shall have been received at the port of departure; so far as relates to any forfeiture or penalty accruing from having arrived or arriving in the United States from British ports or with British merchandise.

3. All vessels now owned by citizens of the United States, and sailing under the American flag, which, being in a foreign port at the time when the enclosed proclamation will be made known at such port, shall with all due diligence depart therefrom, and return without delay to the United States; so far as relates to any forfeiture or penalty accruing from their arriving in the United States from British ports, or with British merchandise.

In the abovementioned cases of vessels arriving in the United States, and which are for the present exempted from seizure, the vessels and cargoes may be admitted to entry.

The time when the enclosed proclamation shall have been known at the ports of departure respectively, must be ascertained by the best means in your power; and you may refer doubtful cases to this department.

Application may of course still be made in all cases for an absolute remission of the forfeitures and penalties in the manner provided for by law; the instruction herein given to abstain from prosecutions and seizures in the abovementioned cases, being only intended to prevent the expenses and inconvenience to which the parties concerned would otherwise be exposed.

I am, respectfully, Sir,

Your obedient servant,

ALBERT GALLATIN

The Collector of

BY THE

*PRESIDENT OF THE UNITED STATES OF AMERICA,*

## A PROCLAMATION.

Whereas in consequence of a communication from his Britannic majesty's envoy extraordinary and minister plenipotentiary, declaring that the British orders in council of Jan. and Nov. 1807, would have been withdrawn on the tenth day of June last ; and by virtue of authority given, in such event, by the eleventh section of the act of Congress, entitled " An act to interdict the commercial intercourse between the United States and Great Britain and France and their dependencies, and for other purposes," I, JAMES MADISON, president of the United States, did issue my proclamation bearing date on the nineteenth of April last, declaring that the orders in council aforesaid would have been so withdrawn on the said tenth day of June, after which the trade suspended by certain acts of Congress might be renewed ; and whereas it is now officially made known to me that the said orders in council have not been withdrawn agreeably to the communication and declaration aforesaid ; I do hereby proclaim the same, and consequently that the trade renewable on the event of the said orders being withdrawn, is to be considered as under the operation of the several acts by which such trade was suspended.

Given under my hand and the seal of the United States, at the city of Washington the ninth day of August, in the year of our Lord, one thousand eight hundred and nine, and of the Independence of the said United States the thirty-fourth.

(Signed)

JAMES MADISON.

*By the President,*R. SMITH, *Secretary of State.*

*Mr. Canning to Mr. Pinkney.*

FOREIGN OFFICE,

May 27th, 1809.

SIR,

ACCORDING to the intimation which I gave to you in our last conference, I have now the honor to enclose to you a copy of the order in council which his majesty has directed to be issued for the purpose of preventing as far as possible any inconvenience or detriment to the merchants of the United States, who may have entered into commercial speculations on the faith of the unauthorised engagements of Mr. Erskine previously to the notification in America of his majesty's disavowal of those engagements.

Having had the honor to read to you *in extenso* the instructions with which Mr. Erskine was furnished, it is not necessary for me to enter into any explanation of those points in which Mr. Erskine has acted not only not in conformity but in direct contradiction to them.

I forbear equally from troubling you, Sir, with any comment on the manner in which Mr. Erskine's communications have been received by the American government, or upon the terms and spirit of Mr. Smith's share of the correspondence.

Such observations will be communicated more properly through the minister whom his majesty has directed to proceed to America; not on any special mission (which Mr. Erskine was not authorised to promise, except upon conditions not one of which he has obtained;) but as the successor of Mr. Ers-



king, whom his majesty has not lost a moment in recalling.

I have the honor to be,

With great consideration;

Sir,

Your most obedient humble servant,

(Signed) GEORGE CANNING.

To WILLIAM PINNEY, Esq.

Esq. Esq. Esq.

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*From the London Gazette, May 27th.*

At the court at the Queen's Palace, the 24th of May, 1809, present the king's most excellent majesty in council.

Whereas his majesty was pleased, by his order in Council of the 26th of April last, to declare certain ports and places of the countries which have been lately styled the kingdom of Holland, to be subject to the restrictions incident to a strict and rigorous blockade, as continued from his majesty's former order of the 11th of November, 1807; and whereas advices have been received of a certain *provisional* agreement entered into by his majesty's envoy extraordinary and minister plenipotentiary in America, with the government of the U. States, whereby it is understood that his majesty's orders in Council of the seventh of January and of the 11th of November 1807, shall be withdrawn so far as respects the United States, on the 10th of June next.

And whereas, although the said *provisional* agreement is *not* such as was authorised by his majesty's instructions, *or such* as his majesty *can approve*, it may already have happened, or may happen, that persons being citizens of the United States may be led by a reliance on the said provisional arrangement, to engage in trade with and to the said ports and places of Holland, contrary to, and in *violation* of the restrictions imposed by the said orders of the 7th of January and of the 11th of November, 1807, as altered by the order of the 26th of April last; his majesty, in order to prevent any inconveniences that may ensue from the circumstances above recited, is pleased, by and with the advice of his privy council, to order, and it is hereby ordered, that the said several orders shall be suspended, so far as is necessary for the protection of vessels of the said United States, so sailing under the faith of the said provisional agreement, viz. That after the 9th day of June next, no vessel of the United States, which shall have cleared out, between the 19th of April last and the 20th of July ensuing, for any of the ports of Holland aforesaid, from any port of the United States, shall be molested or interrupted in her voyage by the commanders of his majesty's ships or privateers.

And be it further ordered, that no vessels of the United States, which shall have cleared out from any port of America, previous to the twentieth of July next, for any other *permitted port*, and shall, during her voyage, have changed her destination, in consequence of information of the said provisional agreement, and shall be proceeding to any of the ports of Holland aforesaid, shall be molested or interrupted by the commanders of any of his majesty's ships or privateers, unless such vessel shall have been informed of this order on her voyage, and shall have been warned not to proceed to any of the ports of Holland aforesaid, and shall, notwithstanding *such*

*warning*, be found attempting to proceed to any such port.

And it is further ordered, that after the said 9th day of June next, no vessel of the United States, which shall have cleared out for, or be destined to any of the ports of Holland, from any port or place not subject to the restrictions of the said order of the twenty-sixth of April last, after notice of such provisional agreement as aforesaid, shall be molested or interrupted in her voyage by the commanders of his majesty's ships or privateers, provided such vessel shall have so cleared out previous to actual notice of this order at such place of clearance, or in default of proof of actual notice previous to the like periods of time, after the date of this order, as are *fixed* for *constructive* notice of his majesty's order of the eleventh of November, one thousand eight hundred and seven, by the orders of the twenty-fifth November, one thousand eight hundred and seven, and of the eighteenth of May, one thousand eight hundred and eight, at certain places and latitudes therein mentioned, unless such vessel shall have been informed of this order on her voyage, and warned by any of his majesty's ships or privateers not to proceed to any port of Holland, and shall, notwithstanding such warning, attempt to proceed to any such port.

And his majesty is pleased further to order, and it is hereby ordered, that the said *several orders* of the seventh of January and eleventh of November, one thousand eight and seven, as altered by the said order of the twenty-sixth of April last, shall also be suspended, so far as is necessary for the protection of vessels of the said United States which shall clear out to any ports not declared to be under the restriction of blockade from any port of Holland, between the ninth day of June and the first day of July next; provided always, that nothing that is contained in the present order shall extend, or be construed to extend.

to protect any vessels or their cargoes, that may be liable to condemnation or detention for any other cause than the violation of the aforesaid orders of the seventh of January and the eleventh of November, one thousand eight hundred and seven, as altered by the said order of the twenty-sixth of April last.

Provided also, that *nothing* in this order contained shall extend, or be construed to extend, to protect any vessel which shall attempt to enter any port actually blockaded by any of his majesty's ships of war !!!

And the right honorable the lords commissioners of his majesty's treasury, his majesty's principal secretary of state, the lords commissioners of the admiralty, and the judge of high court of admiralty, and the judges of the courts of vice admiralty, are to take the necessary measures herein as to them may respectively appertain.

STEPH. COTTRELL.

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*Mr. Pinkney to Mr. Canning.*

GREAT CUMBERLAND PLACE,

*May 29th, 1809.*

SIR,

I HAVE received the communication which you did me the honor to address to me on the 27th instant, and will hasten to transmit it to the secretary of state of the United States.

No instructions or information from my government concerning the transactions in America to which your communication alludes having yet reached me, I can only express my concern that the conciliatory arrangements concerted and concluded, as you have done me the honor to inform me, between the American secretary of state, and his majesty's

accredited minister at Washington, acting in consequence, and professing to act in pursuance, of regular instructions from his court, are not likely to have all that effect which was naturally to have been expected from them.

I have the honor to be,

With great consideration,

Sir,

Your most obedient humble servant.

(Signed) WM: PINKNEY.

The right honorable GEORGE CANNING,

Esq. Esq. Esq.

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*Mr. Erskine to Mr. Smith.*

*Washington, July 31st, 1809.*

SIR,

I HAVE the honor to enclose to you a copy of an order, which was passed by his majesty in council on the 24th of May last.

In communicating this order, it is with the deepest regret that I have to inform you that his majesty has not thought proper to confirm the late provisional agreement which I had entered into with you on the part of our respective governments.

Neither the present time, nor the occasion will afford me a favorable opportunity for explaining to you the grounds and reasons upon which I conceived I had conformed to his majesty's wishes; and to the spirit, at least, of my instructions upon that subject; nor, indeed, would any vindication of

my conduct, (whatever I may have to offer) be of any importance, further than as it might tend to shew that no intention existed on my part to practice any deception towards the government of the United States.

I have the satisfaction, however, to call your attention to that part of the enclosed order, which protects the commerce and shipping of the United States, from the injury and inconveniences, which might have arisen to American citizens from a reliance on the provisional agreement before mentioned; and I cannot but cherish a hope that no further bad consequences may result from an arrangement, which I had fully believed would have met his majesty's approbation, and would have led to a complete and cordial understanding between the two countries.

With sentiments of the highest respect, &c.

(Signed)

D. M. ERSKINE.

The Hon. ROBERT SMITH,

*Ec. Ec. Ec.*

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*The Secretary of State to Mr. Erskine.*

*Department of State, Aug. 9, 1809.*

SIR,

I HAVE just received from Mr. Pinkney a letter, enclosing a printed paper, purporting to be a copy of a despatch to you from Mr. Canning, which states among other things that from the report of your conversations with Mr. Madison, Mr. Gallatin and Mr. Smith it appears;

“1st. That the American government is prepared in the event of his majesty’s consenting to withdraw the orders in council of January and November 1807, to withdraw contemporaneously on its part, the interdiction of its harbours to ships of war, and all non-intercourse and non-importation acts, so far as respects Great Britain, leaving them in force with respect to France and the powers which adopt or act under her decrees.

“2d. That America is willing to renounce, during the present war, the pretension of carrying on in time of war all trade with the enemies colonies, from which she was excluded during peace.

“3d. Great Britain for the purpose of securing the operation of the embargo, and the *bona fide* intention of America, to prevent her citizens from trading with France, and the powers adopting and acting under the French decrees, is to be considered as being at liberty to capture all such American vessels, as may be found attempting to trade with the ports of any of these powers; without which security for the observance of the embargo, the raising it nominally with respect to Great Britain alone, would in fact, raise it with respect to all the world.”

I have the honor to request you to favor me with such explanations as your candor will at once suggest, in relation to these imputed conversations.

I forbear to express to you, Sir, the surprise that is felt at the extraordinary pretensions set forth in this letter of instruction, and especially at the expectation that this government would, as a preliminary, recognize conditions, two of which are so manifestly irreconcilable to the dignity and interest of the United States. I, however, would remark, that had you deemed it proper to have communicated *in extenso* this letter, it would have been impossible for the President to have perceived in its conditions, or in its spirit, that conciliatory disposition, which had been

professed, and which, it was hoped, had really existed.

I have the honor to be, &c.

(Signed)

R. SMITH

The Hon. DAVID M. ERSKINE,

&c. &c. &c.

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*Mr. Erskine to Mr. Smith.*

*Washington, August, 14, 1809.*

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 9th instant, informing me that you had just received a letter from Mr. Pinkney enclosing a printed paper, purporting to be a copy of a despatch to me from Mr. Canning, which states, among other things, "from the report of your conversations with Mr. Madison, Mr. Gallatin, and Mr. Smith it appears :

" 1st. That the American government is prepared, in the event of his majesty's consenting to withdraw the orders in council of January and November 1807, to withdraw contemporaneously on its part, the interdiction of its harbors to ships of war, and all non-intercourse and non-importation acts so far as respects Great Britain, leaving them in force with respect to France, and the powers which adopt, or act under her decrees.

" 2d. That America is willing to renounce, during the present war, the pretension of carrying on, in time of war, all trade with the enemies colonies, from which she was excluded during peace.

" 3d. Great Britain, for the purpose of securing the operation of the embargo, and the *bona fide* intention of America to prevent her citizens from trading with



France and the powers adopting and acting under the French decrees is to be considered as being at liberty to capture all such American vessels as may be found attempting to trade with the ports of any of these powers; without which security for the observance of the embargo, the raising it nominally with respect to Great Britain alone, would, in fact, raise it with respect to all the world."

The explanations which you request from me upon that subject shall be given with candor; and I will proceed, accordingly, to lay before you an abstract of the communications which I made to his majesty's government, relative to the unofficial conversations which I had held with Mr. Madison, (then secretary of state) Mr. Gallatin and yourself, at the time and upon the occasion alluded to by his majesty's secretary of state (Mr. Canning) in that part of his instructions to me of which you inform me you have received a printed copy from Mr. Pinkney.

Upon referring to my despatches, addressed to his majesty's government of the 3d and 4th of December last, in which these communications are detailed, I conclude that the conversations alluded to must have been held some days previous to that period, and were to the following effect.

Mr. Madison (then secretary of state) is represented by me to have urged various arguments tending to prove that the United States had exerted all their efforts to persuade the French government to withdraw their unjust restrictions upon neutral commerce and that recourse might have been had to measures of more activity and decision against France than mere remonstrances, but that, in the mean time, Great Britain had issued her orders in council, before it was known whether the United States would acquiesce in the aggressions of France, and thereby rendered it impossible to distinguish between the conduct of the two belligerents, who had equally committed aggressions against the United States.

After some other observations, Mr. Madison is stated by me at that time to have added that as the world must be convinced that America had in vain taken all the means in her power to obtain from Great Britain and France a just attention to her rights as a neutral power by representations and remonstrances, that she would be fully justified in having recourse to hostilities with either belligerent, and that she only hesitated to do so from the difficulty of contending with both; but that she must be driven even to endeavor to maintain her rights against the two greatest powers in the world, unless either of them should relax their restrictions upon neutral commerce: in which case, the United States would at once side with that power against the other which might continue its aggressions.

That every opinion which he entertained respecting the best interests of his country led him to wish that a good understanding should take place between Great Britain and the United States, and that he thought that the obvious advantages which would thereby result to both countries were a sufficient pledge of the sincerity of his sentiments.

These observations, Sir, I beg leave to remark were made to me by Mr. Madison, about a month after the intelligence had been received in this country of the rejection by his majesty's government of the proposition made through Mr. Pinkney by the President for the removal of the embargo as respects Great Britain, upon condition that the orders in council should be withdrawn as respected the United States; and his sentiments were, as I conceived, expressed to me, in order that I might convey them to his majesty's government, so as to lead to a reconsideration of the proposition abovementioned with a view to the adjustment of the differences upon that subject between the respective countries. But I never considered that Mr. Madison meant that the government of the United States would pledge them-

selves beyond the proposition respecting the embargo as above stated, because that was the extent of the power of the President by the constitution of the United States.

I understood, very distinctly that the observations of the secretary of state were intended to convey an opinion as to what ought and would be the course pursued by the United States, in the event of his majesty's orders in council being withdrawn.

In these sentiments and opinions you concurred, as I collected from the tenor of several conversations which I held with you at that period.

With respect to the second point, as stated in your letter to be contained in a despatch from Mr. Canning, I beg leave to offer the following explanation.

In the course of a private interview I had with Mr. Gallatin, (the secretary of the treasury) he intimated that the non-intercourse law which was then likely to be passed by the Congress, might be considered as removing two very important grounds of difference with Great Britain, viz. the non-importation act, as applicable to her alone, and also the President's proclamation, whereby the ships of Great Britain were excluded from the ports of the United States, while those of France were permitted to enter, but that by the non-intercourse law, both powers were placed on the same footing. He did not pretend to say that this measure had been taken from any motives of concession to Great Britain; but as in fact, those consequences followed, he conceived they might be considered as removing the two great obstacles to a conciliation.

He adverted also to the probability of an adjustment of another important point in dispute between the two countries as he said he knew that it was intended by the United States to abandon the attempt to carry on a trade with the colonies of belligerents in time of war, which was not allowed in time of

peace, and to trust to the being permitted by the French to carry on such trade in peace, so as to entitle them to a continuance of it in time of war.

As it may be very material to ascertain what "trade with the colonies of belligerents," was, in my conception, meant by Mr. Gallatin, as intended to be abandoned by the United States, I feel no hesitation in declaring that I supposed he alluded to the trade from the colonies of belligerents *direct* to their mother country or to the ports of other belligerents, because the right to such trade had been the point in dispute; whereas the right to carry on a trade from the colonies of belligerents to the United States, had never been called in question, and had been recognised by his majesty's supreme court of admiralty; and the terms even upon which such colonial produce might be re-exported from the United States had been formally arranged in a treaty signed in London by the ministers plenipotentiary of both countries, which was not indeed ratified by the President of the United States; but was not objected to as to that article of it which settled the terms upon which such trade was to be permitted.

Such was the substance, Sir, of the unofficial conversations which I had held with Mr. Madison, Mr. Gallatin and yourself, which I did not consider or represent to his majesty's government as intended with any other view than to endeavor to bring about the repeal of the orders in council, by shewing that many of the obstacles which had stood in the way of an amicable adjustment of the differences between the two countries were already removed, and that a fair prospect existed of settling what remained; since the United States exhibited a determination to resist the unjust aggressions upon her neutral rights, which was all that Great Britain had ever required: but I certainly never received any assurances from the American government that they would pledge themselves to adopt the conditions specified in Mr. Can-

ning's instructions as preliminaries; nor did I ever hold out such an expectation to his majesty's government; having always stated to them that in the event of his majesty's thinking it just or expedient to cause his orders in council to be withdrawn, that the President would take off the embargo as respected England, leaving it in operation against France and the powers which adopted, or acted under, her decrees, according to the authority which was vested in him at that time by the Congress of the United States, and that there was every reason to expect that a satisfactory arrangement might be made upon the points of the colonial trade which had been so long in dispute between the two countries.

As to the third condition referred to by you, specified in Mr. Canning's instructions, I have only to remark, that I never held any conversation with the members of the government of the United States relative to it, until my late negotiation; or had ever mentioned the subject to his majesty's government, it having for the first time, been presented to my consideration in Mr. Canning's despatch to me of the 23d January, in which that idea is suggested, and is stated to have been assented to by Mr. Pinkney.

It would be unavailing at the present moment to enter upon an examination of the "pretensions set forth in Mr. Canning's letter of instructions" which you are pleased to term "extraordinary."

I consider it, however, to be my duty to declare that, during my negotiation with you which led to the conclusion of the provisional agreement, I found no reason to believe that any difficulties would occur in the accomplishment of the two former conditions, as far as it was in the power of the President of the United States to accede to the first, and consistently with the explanation which I have before given of the second point: on the contrary I received assurances through you that the President would comply (as far as it was in his power) with the first condi-

tion, and that there could be no doubt that the Congress would think it incumbent upon them to assert the rights of the United States against such powers as should adopt or act under the decrees of France as soon as their actual conduct or determination upon that subject could be ascertained; but that, in the mean time, that the President had not the power, and could not undertake to pledge himself in the formal manner required to that effect.

I received also assurances from you, that no doubt could be reasonably entertained that a satisfactory arrangement might be made in a treaty upon the subject of the second condition mentioned in Mr. Canning's instructions according to my explanation of it in the foregoing part of this letter, but that it necessarily would form an article of a treaty in which the various pretensions of the two countries should be settled.

The third condition you certainly very distinctly informed me could not be recognized by the President, but you added what had great weight in my mind, that you did not see why any great importance should be attached to such a recognition; because it would be impossible that a citizen of the United States could prefer a complaint to his government on account of the capture of his vessel while engaged in a trade absolutely interdicted by the laws of his country.

Under these circumstances, therefore, finding that I could not obtain the recognitions specified in Mr. Canning's despatch of the 23d January (which formed but *one part* of his instructions to me) in the formal manner required, I considered that it would be in vain to lay before the government of the United States the despatch in question, which I was at *liberty* to have done *in extenso* had I thought proper: But as I had such strong grounds for believing that the object of his majesty's government could be attained, though in a different manner, and the spirit, at least,

of my several letters of instructions be fully complied with, I felt a thorough conviction upon my mind, that I should be acting in conformity with his majesty's wishes, and, accordingly, concluded the late provisional agreement on his majesty's behalf with the government of the United States.

The disavowal by his majesty is a painful proof to me that I had formed an erroneous judgment of his majesty's views and the intention of my instructions; and I have most severely to lament that an act of mine (though unintentionally) should produce any embarrassment in the relations between the two countries.

It is a great consolation to me, however, to perceive that measures have been adopted by both governments to prevent any losses and obviate any inconveniences which might have arisen to the citizens or subjects of either country from a reliance on the fulfilment of that provisional agreement; and I cannot but cherish a hope, that a complete and cordial understanding between the two countries may be effected.

I beg leave to add that it would have given me great happiness to have contributed to so desirable an object, and to offer you the assurance of the great respect and high consideration with which I remain,

Sir, your obedient servant.

(Signed)

D. M. ERSKINE.



*The Secretary of the Treasury to Mr. Erskine.*

(Copy.)

*Washington, 13th August, 1809.*

SIR,

I DO not believe, that in the conversations we have had respecting the practicability of an ad-

justment of the differences between the United States and Great Britain, we have ever misunderstood one another. Yet as from Mr. Canning's instructions lately published by your government, it would seem that some opinions are ascribed to several members of this administration, which they did not entertain, it appears necessary to ascertain whether on any point a misapprehension can have taken place.

I will forbear making any observations on what in the instructions is called the third condition, since it is not asserted that that inadmissible proposition was suggested at Washington.

The points embraced in Mr. Canning's first proposition formed the principal topic of our conversations, relative to a revocation of the orders in council. Yet in the manner in which that proposition is expressed it goes farther than had been suggested by the members of this administration. It is sufficiently evident from the proceedings of Congress, both previous and subsequent to the unratified agreement of April last, that the United States intended to continue the restrictions on the commercial intercourse with France, whilst such of her decrees as violated our neutral rights continued in force, and to remove those restrictions in relation to Great Britain, in the event of a revocation of the orders in council. But that state of things so far as it related to France, was to result from *our own laws*—known or anticipated by your government when they authorised an arrangement; and it was not proposed by us that the continuance of the non-intercourse with France should be made a condition of that arrangement.—Whilst on that subject, I will add an observation, though perhaps not immediately connected with the object of this letter. I think that the object of that proposition, so far as it agreed with your previous understanding of the intentions of this government, has been substantially carried into effect on our part. It is true, that your government might at the date of the instructions have expected from the incipient



proceedings of Congress, that Holland would be embraced by the restrictive laws of the United States. Not only however, was the omission nominal, since American vessels were at the time by the decrees of that country refused admission into its ports; but under the same construction of our laws by which the commercial intercourse with Holland was permitted, that with Portugal was also considered as legal in the event of that country being occupied by British troops in the name of the Prince Regent.

It is therefore principally as respects the second condition which relates to the colonial trade, that erroneous inferences might be drawn from the expressions used in Mr. Canning's instructions. Although the subject must have been mentioned here incidentally, and only in a transient manner, as it is one to which I had paid particular attention, and on which my opinion had never varied, I think that I can state with precision in what view I have always considered it, and must have alluded to it.

1. I never could have given countenance to an opinion that the United States would agree, or that it would be proper to make any arrangement whatever, respecting the colonial trade, a condition of the revocation of the orders in council. The two subjects were altogether unconnected, and I am confident that such a proposition was never suggested either by you, or by any member of this administration. Such an arrangement could be effected only by treaty; and it is with a considerable degree of surprise that I see your government now asking not only resistance to the French decrees, but the abandonment of a branch of our commerce as the price of the revocation of the orders in council. This seems to give a new character to a measure which had heretofore been represented as an act of retaliation reluctantly adopted, and had been defended solely on the ground of a supposed acquiescence on the part of the United States in the injurious decrees of another nation.

2. In the event of a treaty, embracing all the points in dispute, and particularly that of impressments, without which, I trust, no treaty will ever take place, it was my opinion, and I may certainly have expressed it, that if the other subjects of difference were arranged, that respecting the colonial trade would be easily adjusted. I had considered the principles recognized in a former correspondence between lord Hawkesbury and Mr. King, on the subject of the colonial trade, and subsequently again adopted in the treaty negotiated by Messrs. Monroe and Pinkney, as a general basis agreed on under different administrations by both governments, from which neither could now recede, and susceptible only of modifications as to details. The instructions to our ministers in London on that subject, had also been published and were known to your government. I therefore believed that the United States, in the event of a treaty, would still be disposed to wave for the present, in the manner and on the terms contemplated by those instructions, their right to that branch, and to that branch only, of the colonial trade, known by the name of *direct trade*, that is to say, the trade carried directly from belligerent colonies to the belligerents in Europe, when that trade was not permanently, in peace as in war, permitted by the laws of the country to which those colonies belonged. The right to a trade between such colonies and the United States generally, and to that in colonial articles between the United States and other countries, never can, or will in my opinion be abandoned, or its exercise be suspended by this government; on the contrary, it is solely in order to secure, by an express treaty stipulation, that trade against the danger of interruption, and thus by a mutual spirit of accommodation to avoid collisions, that the abandonment of the direct branch can ever be assented to.

Permit me therefore to request, that you will inform me, whether you understood me on those two

points, as I certainly meant to be understood ; namely, that the relinquishment, during the present war, of what is called the direct trade was alone contemplated ; and that no arrangement on that subject was suggested as a condition of the revocation of the orders in council.

I have the honor to be,

With the highest respect and consideration,

Sir,

Your obedient servant.

(Signed)

ALBERT GALLATIN.

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*Mr. Erskine to the Secretary of the Treasury.*

*Washington, August 15th, 1809.*

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 13th instant, in which you have been pleased to say, that although you “ do not believe that, in the conversations we have had respecting the practicability of an adjustment of the differences between the United States and Great Britain, we ever have misunderstood one another ; yet as from Mr. Canning’s instructions, lately published by my government, it would seem that some opinions are ascribed to several members of this administration which they did not entertain, it appears necessary to ascertain whether on any point a misapprehension can have taken place.”

In answer to your enquiries, I have great satisfaction in assuring you, that there appears to have been no misunderstanding respecting the substance or meaning of the conversations which passed between us, as stated in Mr. Canning’s instructions alluded to.

After the most careful perusal of your statement

of the purport of our conversations, I cannot discover any material difference from the representation which I have made upon that subject to the secretary of state, (Mr. Robert Smith) in my letter to him of the 14th instant, to which I will therefore beg to refer you, as I have therein detailed the substance of the conversation according to my recollection of it; which is, in every respect, essentially the same as that which you seem to have entertained.

During the conversation which we held respecting the practicability of an amicable adjustment of the differences between the two countries, when the relinquishment by the United States during the present war, of what is called the colonial trade, was suggested by you, I conceived that you meant, (as you have stated) "the trade carried directly from belligerent colonies to the belligerents in Europe, when that trade was not permanently, in peace as in war, permitted by the laws of the country to which those colonies belonged."

I never supposed that you intended to convey an opinion, that the government of the United States would make any arrangement respecting the colonial trade, as a condition of the revocation of the orders in council, the two subjects being altogether unconnected; nor have I ever represented to his majesty's government that such preliminary pledges would be given.

With sentiments of the highest respect,

I have the honor to be,

Sir,

Your most obedient humble servant.

(Signed)

D. M. ERSKINE.

The Hon. ALBERT GALLATIN,

*Wc. Wc. Wc*

*The Secretary of State to Mr. Jackson.*

*Department of State, October 9th, 1809.*

SIR,

AN arrangement, as to the revocation of the British orders in council, as well as to the satisfaction required in the case of the attack on the Chesapeake frigate, has been made in due form by the government of the United States, with David Montague Erskine, esq. an accredited minister plenipotentiary of his Britannic majesty. And after it had been faithfully carried into execution on the part of this government, and under circumstances rendering its effects on the relative situation of the United States irrevocable, and in some respects, irreparable, his Britannic majesty has deemed it proper to disavow it, to recal his minister, and to send another to take his place.

In such a state of things, no expectation could be more reasonable, no course of proceeding more obviously prescribed by the ordinary respect due to the disappointed party, than a prompt and explicit explanation, by the new functionary, of the grounds of the refusal, on the part of his government, to abide by an arrangement so solemnly made—accompanied by a substitution of other propositions.

Under the influence of this reasonable expectation, the President has learned, with no less surprise than regret, that in your several conferences with me you have stated :

1. That you have no instructions from your government which authorise you to make any explanations whatever to this government, as to the reasons which had induced his Britannic majesty to disavow the arrangement lately made by your predecessor, and that therefore you could not make any such explanations.

2. That in the case of the Chesapeake, your instructions only authorise you, (without assigning any

reason whatever why the reasonable terms of satisfaction, tendered and accepted, have not been carried into effect) to communicate to this government a note tendering satisfaction, with an understanding, that such note should not be signed and delivered by you, until you should have previously seen and approved the proposed answer of this government, and that the signing and the delivery of your note and of the answer of this government should be simultaneous.

3. That you have no instructions which authorise you to make to this government any propositions whatever, in relation to the revocation of the British orders in council; but only to receive such as this government may deem it proper to make to you.

4. That, at all events, it is not the disposition or the intention of the British government to revoke their orders in council, as they respect the United States, but upon a formal stipulation on the part of the United States, to accede to the following terms and conditions, viz.

1. That the act of Congress, commonly called the non-intercourse law, be continued against France so long as she shall continue her decrees.

2. That the navy of Great Britain be authorised to aid in enforcing the provisions of the said act of Congress.

3. That the United States shall explicitly renounce, during the present war, the right of carrying on any trade whatever, direct or indirect, with any colony of any enemy of Great Britain, from which they were excluded during peace; and that this renunciation must extend, not only to the trade between the colony and the mother country, but to the trade between the colony and the United States.

If in the foregoing representation it should appear, that I have in any instance misapprehended your meaning, it will afford me real pleasure to be enabled to lay before the President a statement cor-

rected agreeably to any suggestions with which you may be pleased to favor me.

To avoid the misconceptions incident to oral proceedings, I have also the honor to intimate, that it is thought expedient that our further discussions, on the present occasion, be in the written form. And with great sincerity I assure you, that whatever communications you may be pleased thus to make, will be received with an anxious solicitude to find them such as may lead to a speedy removal of every existing obstacle to that mutual and lasting friendship and cordiality between the two nations, which it is obviously the interest of both to foster.

I have the honor to be, &c.

(Signed)

R. SMITH.

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*Mr. Jackson to Mr. Smith.*

*Washington, 11th October, 1809.*

SIR,

I HAVE had the honor of receiving your official letter of the 9th instant, towards the close of which you inform me, that it had been thought expedient to put an end to all verbal communication between yourself and me, in discussing the important objects of my mission. Considering that a very few days have elapsed since I delivered to the President a credential letter from the king my master, and that nothing has been even alleged to have occurred, to deprive me of the facility of access, and of the credit to which, according to immemorial usage, I am by that letter entitled, I believe there does not exist in the annals of diplomacy a precedent for such a determination between two ministers, who have met for the avowed purpose of terminating amicably

the existing differences between their respective countries; but, after mature reflection, I am induced to acquiesce in it by the recollection of the time that must necessarily elapse before I can receive his majesty's commands upon so unexpected an occurrence, and of the detriment that would ensue to the public service, if my ministerial functions were, in the interval, to be altogether suspended. I shall therefore content myself with entering my protest against a proceeding which I can consider in no other light, than as a violation, in my person, of the most essential rights of a public minister when adopted, as in the present case, without any alleged misconduct on his part. As a matter of opinion, I cannot I own, assent to the preference which you give to written, over verbal intercourse for the purpose of mutual explanation and accommodation. I have thought it due to the public character with which I have the honor to be invested, and to the confidence which his majesty has most graciously been pleased to repose in me, to state to you unreservedly my sentiments on this point. I shall now proceed to the other parts of your letter, and apply to them the best consideration that can arise from a zeal proportioned to the increase of difficulty thus thrown in the way of the restoration of a thorough good understanding between our respective countries.

You state, Sir, very truly, that an arrangement had been made between you and Mr. Erskine, and that his majesty had thought proper to disavow that arrangement.

I have here in the outset, to regret the loss of the advantage of verbal intercourse with you, as I should have availed myself of it to enquire whether by your statement, it were your intention to complain of the disavowal itself, or of a total want of explanation of it, or of the circumstance of that explanation not having been made through me. I observe that in the records of this mission there is no trace of a com-



plaint, on the part of the United States, of his majesty having disavowed the act of his minister. You have not in the conferences, we have hitherto held, distinctly announced any such complaint, and I have seen with pleasure, in this forbearance, on your part, an instance of that candor, which I doubt not, will prevail in all our communications, inasmuch as you could not but have thought it unreasonable to complain of the disavowal of an act, done under such circumstances, as *could only* lead to the consequences that have actually followed.

It was not known when I left England, whether Mr. Erskine had, according to the liberty allowed him, communicated to you *in extenso* his original instructions. It now appears that he did not. But in reverting to his official correspondence, and particularly to a despatch addressed on the 20th of April to his majesty's secretary of state for foreign affairs, I find that he there states, that he had submitted to your consideration the three conditions specified in those instructions, as the ground work of an arrangement which, according to information received from this country, it was thought in England might be made, with a prospect of great mutual advantage.— Mr. Erskine then reports *verbatim et seriatim* your observations upon each of the three conditions, and the reasons which induced you to think that others might be substituted in lieu of them. It may have been concluded between you that these latter were an equivalent for the original conditions; but the very act of substitution evidently shews that those original conditions were in fact very explicitly communicated to you, and by you of course laid before the President for his consideration. I need hardly add, that the difference between these conditions and those contained in the arrangement of the 18th and 19th of April, is sufficiently obvious to require no elucidation; nor need I draw the conclusion, which I consider as admitted by all absence of complaint on the

part of the American government, viz: that under such circumstances his majesty had an undoubted and incontrovertible right to disavow the act of his minister. I must here allude to a supposition, which you have more than once mentioned to me, and by which, if it had any the slightest foundation, this right might perhaps have been in some degree affected. You have informed me that you understood that Mr. Erskine had two sets of instructions, by which to regulate his conduct; and that upon one of them, which had not been communicated either to you or to the public, was to be rested the justification of the terms finally agreed upon between you and him. It is my duty, Sir, solemnly to declare to you, and through you, to the President, that the despatch from Mr. Canning to Mr. Erskine which you have made the basis of an official correspondence with the latter minister, and which was read by the former to the American minister in London, is the only despatch by which the conditions were prescribed to Mr. Erskine for the conclusion of an arrangement with this country on the matter to which its relates.

To return to the immediate subject of your letter. If, Sir, it be your intention to state, that no explanation whatever has been given to the American government of the reasons which induced his majesty to disavow the act of my predecessor, I must, in that case, observe that in the instructions conveying to him his majesty's intention, those reasons were very fully and forcibly stated; and if he has not transmitted them to you, I can only attribute it to the peculiar delicacy and embarrassment of his situation, for which he probably trusted to the President's goodness to make some allowance; and he might the more reasonably be led to that reliance on it, as a full and ample communication was also made upon the subject by his majesty's secretary of state for foreign affairs to Mr. Pinkney, to whom the whole of Mr. Erskine's original instruction was read, and who it was

natural to suppose, would convey to his government so much information upon a very momentous occasion, as would relieve Mr. Erskine from the necessity of entering into minute details of the misunderstanding that had occurred. At all events, no complaint can be substantiated against his majesty's government on this score, seeing that they not only instructed the minister who had made the disavowed arrangement as to the motives which occasioned the disavowal, but also with frankness, promptitude, and a most scrupulous regard to national honor, gave notice to the American minister in London of the disavowal, of the motives of it, and of the precautions spontaneously taken by his majesty to prevent any loss or injury accruing to the citizens of the United States from a reliance on any agreement, however unauthorised, made in his majesty's name. The mere allusion to this latter circumstance dispenses me from further noticing the effects which you describe as being produced upon the United States by the circumstances of this agreement. How far they are irrevocable it is not for me to determine; but the word *irreparable* seems to imply that a loss had been sustained on the occasion by the public, or by individuals of this country. So far as his majesty could be by possibility supposed answerable for such an eventual loss, he has, as I have before stated, taken the utmost precautions to avert it.

As to the expectation entertained here, that the explanation of his majesty's share in this transaction should be made through me, I might content myself with simply observing, that I was not provided with instructions to that effect, because it was known that the explanation in question had already been given. But it accords with the sentiments of his majesty towards this country to observe also, that he considered, that as some time must necessarily elapse between my appointment and my entrance on the duties of my ministry, it would be a more friendly mode of

proceeding to state without delay, and through the channels I have already mentioned, the motives that compelled his majesty to disavow the agreement, than to leave the American government in uncertainty in these respects, till the unavoidably protracted period of my arrival in America. I say this in regard to the original notification of his majesty's determination and of the motives of it, which being already made, it could not be supposed in London that a repetition of them would be expected from me; and of course no such case has been foreseen in my instructions. But if, beyond this, any incidental explanation or discussion should be wished for by this government, I came fully prepared to enter into them. I even consider them to have taken place between us. I have certainly derived great satisfaction from the several hours which we have spent in conference upon these subjects, because they have enabled me to remove some misunderstandings, and to refute many misrepresentations, which you yourself informed me of, in regard to the conduct of the British government. I consider such mutual explanations as highly beneficial to a right understanding of the views and interests of the two countries, and I should with much pleasure have renewed them, if you had not informed me that the President had been pleased to prescribe another and a different mode of conducting our negotiations.

I will nevertheless avail myself of that mode which he still permits to repeat to you, that his majesty has authorised me, notwithstanding the ungracious manner in which his former offer of satisfaction for the affair of the Chesapeake was received, to renew that which Mr. Erskine was instructed to make. You have said that you so fully understood the particulars of that offer, that I deem it unnecessary to recapitulate them here; I regret that, since they were so clearly understood by you, you should not yet have been enabled to state to me either in our personal

communications, or in the letter which I am now answering, whether they are considered by the President as satisfactory, or whether they are such as he ultimately means to accept. You seem not so distinctly to have understood the form of proceeding in this affair, which I took the liberty of suggesting as likely to lead to a satisfactory result, without however at all precluding any other method which might appear preferable to you. My proposal was, not to communicate a note *tendering* satisfaction, but to agree with you beforehand upon the terms of a declaration on the part of his majesty, *which should actually give the satisfaction* (the conditions of which I informed you that I was authorised to carry into immediate execution) and of a counter declaration to be signed by you on the part of the United States for the purpose of accepting such satisfaction. I expressly stated that this interchange of official documents was not meant by me as the means of conveying to each other our respective sentiments; *that* I understood to be, as is usual, the object of our conferences; and I imagined that the papers to be signed by us respectively, would be the result of those sentiments so communicated, and that by being reciprocally corrected and modified, and simultaneously delivered, they would form one compact by which the two countries would be equally bound. This course of proceeding is conformable to the practice of the courts of Europe on similar occasions. You did not at the time appear to object to it; you even requested me to come the next day prepared with a draft or project of a paper, framed in pursuance to these ideas, and altho' you desired to refer the subject to the President for his approbation, I do not find in your letter either an expression of his sentiments upon it, or the substitution of any other form that might be more agreeable to him, than the one which I have proposed.

I touch with considerable and very sincere reluc-

tance upon that part of your letter, in which you state that I had not assigned "any reason whatever" "why the reasonable terms of satisfaction tendered" "and accepted have not been carried into effect."

I believe that I had observed to you, in the words of my instructions, that if his majesty were capable of being actuated by any desire to retract an offer of reparation which he had once made, his majesty might be well warranted in doing so both by the form in which his accredited minister had tendered that reparation, and by the manner in which that tender had been received. I believe that I elucidated this observation by a reference to the particular expressions, which made the terms of satisfaction appear to be unacceptable even to the American government, at the very moment when they were accepted, and which at all events put it totally out of his majesty's power to ratify and confirm any act in which such expressions were contained.

On the subject of his majesty's orders in council, I have had the honor of informing you that his majesty having caused to be made to the government of the United States certain proposals founded upon principles, some of which were understood to originate in American authorities, and others to be acquiesced in by them; and having afterwards ascertained, in the manner mentioned in a former part of this letter, that the sentiments of the American government were so different from what they were at first understood to be, I was not instructed to renew to you those proposals; nor to press upon your acceptance an arrangement which had been so recently declined, especially as the arrangement itself is become less important, and the terms of it less applicable to the state of things now existing.

Those considerations which were first intimated in Mr. Canning's official letter to Mr. Pinkney of the 23d September, 1808, and which, in the process of the following six months, acquired greater weight and

influence, induced his majesty, before the result of Mr. Erskine's negotiation was known, to modify the orders in council of November, 1807, by that of the 26th April, 1809.

The effect of this new order is to relieve the system under which the former orders were issued, from that which has always been represented in this country, as the most objectionable and offensive 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 was originally devised and intended as a mitigation of what is certainly more correct but more rigid in principle, the total and unqualified interdiction of all trade with the enemy. If, however, this mitigation was felt as an aggravation, and, as has been sometimes warmly asserted, as an insult, that cause of complaint is now entirely removed. By the order in council of the 26th April, 1809, all trade with France and Holland, and the ports of Italy, comprehended under the denomination of the kingdom of Italy, is simply prohibited altogether. No option is afforded, and consequently no transit duty is required to be paid. In another respect, the order in council of the 26th April must be admitted to be more restrictive than those of November, 1807.

The trade with enemies colonies which was opened to neutrals at the commencement of the present war by the order in council of the 24th June, 1803, was continued to be left open by those of November, 1807. The order in council of the 26th April retracts this indulgence. But it is to be observed, that since the period, when the orders in council of November, 1807, were issued, the opening of the ports of Spain, of Portugal, of the South of Italy, and of Turkey, has afforded a more ample scope to neutral commerce; and that by the capture of Martinique in addition to that of almost all the colonies of the enemies of Great Britain, together with the blockade of Guadaloupe, the extent to which the liberty of com-

merce with enemies colonies applied, has been so far narrowed, that there is little of practical hardship in recurring to the rule which, however occasionally mitigated in its application, Great Britain can never cease in principle to maintain. It is farther to be observed, that the order in council of the 26th April, has this operation highly favorable to neutrals, that restricting the regulations of blockade to France, Holland, and their colonies, and to the territories denominated the kingdom of Italy; it lays open to the direct trade of neutrals the ports of the north of Europe. Under the order of the 26th of April, therefore, while there are on the one hand fewer points of difference to stand in the way of a satisfactory arrangement between Great Britain and the United States, it is possible that there may be less temptation to the latter to enter into such an arrangement, as the extent of their commerce may be, if they please, nearly as great under the order in council of the 26th April, as it would be under any arrangement which should affect the indispensable objects to which that order applies; or as it would be even without any such order, so long as France and the powers subservient to France, continue to enforce their decrees. It is, in the same proportion, matter of indifference to Great Britain, whether the order in council be continued, or an arrangement by mutual consent, substituted in its room.

Such, Sir, are the grounds on which it has appeared to his majesty to be unnecessary to command me to propose to the government of the United States any formal agreement to be substituted for that which his majesty has been under the necessity of disavowing; but I am directed to receive and discuss with you any proposal which you may be authorised to make to me on this head.

As no disposition has hitherto been shewn on your part to make any such proposal, it has been impossible for me to state by anticipation, (nor was I in-



structed so to do) what might be the answer that I should eventually think it my duty to return to you; consequently I could not have made with that view the statement contained in the fourth section of your letter, and the three subdivisions of it. Such a statement would have been obviously inconsistent with the former part of my overture, which you very correctly record in the third section, viz: that I was not instructed to make to you any proposal whatever upon this subject. I must necessarily reserve, until I hear from you what proposals it may be deemed proper to make on behalf of the United States, to state in how far they do or do not accord with the instructions which it has pleased his majesty to give me for my guidance in this negotiation.

I will only add, Sir, in conclusion of this letter, that his majesty is very sincerely desirous of maintaining a perfect and cordial understanding with the United States, and of bringing to a complete and satisfactory adjustment, all the points of difference that have arisen between the two governments; and that, agreeing as I do with you, most heartily, as to the interest which both nations have in fostering a mutual and solid friendship and cordiality, no zeal or exertions shall be wanting on my part to carry into effect his majesty's commands for this most salutary purpose.

I have the honor to be,

With great respect,

Sir,

Your most obedient humble serv't.

(Signed)

F. J. JACKSON.

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*From the Secretary of State to Mr. Jackson.*

*Department of State, Oct. 19, 1809.*

SIR,

I HAVE had the honor of receiving your letter of the 11th instant.

Before I proceed to the more material topics, which it embraces, it is proper that I should take some notice of your construction which has unhappily converted an intimation of the expediency of conducting in a written form our further discussions, on this particular occasion, into a general prohibition of all verbal communications whatever, and into an unprecedented violation of the most essential rights of a public minister requiring a formal protest and a resort to the commands of your sovereign.

A recurrence to that intimation cannot fail to shew, that its sole object was to avoid, in the *further* discussions of a case of unusual delicacy and importance, the misconceptions well known to be incident to oral proceedings, and of which the diplomatic intercourse between the two governments had furnished so many and such serious proofs; nay, of which your letter itself is an additional illustration. That a change in diplomatic discussions, from an oral to a written form is not without precedent, I cannot refer to one which will be more satisfactory to you than the intimation recently given by Mr. Canning in the case of the proposal by Mr. Pinkney, on the subject of the orders in council and the embargo, that the discussions which had been previously verbal must thenceforth take a written form. And with this view I take the liberty of recalling your attention to the subjoined extracts (*see A. & B.*) of letters that passed on that occasion.

On the present, as on that occasion, the change from verbal to written communications was requested after two conferences, and when the subject appeared to one of the parties to have, by those verbal discussions, been brought to a point which required a precise understanding of the views and propositions of the other.

You will, sir, hence perceive, that in maintaining the right, which every government has as to the rules of intercourse with foreign functionaries near it, no encroachment has been made or intended on any right or customary privilege belonging to you in that character, nor any thing done to impede the proper and usual course of negotiation.

You have been sufficiently apprised, by my letter of the 9th, of the light in which the President views the arrangement lately made by your predecessor with this government, and of the grounds on which he has expected a formal and satisfactory explanation of the reasons for the refusal of his Britannic majesty to carry it into effect. He persists in that expectation, and in the opinion that there has been given no explanation that is adequate, either as to the matter or as to the mode.

When one government has been solemnly pledged to another in a mutual engagement by its acknowledged and competent agent, and refuses to fulfil the pledge, it is perfectly clear, that it owes it, both to itself and to the other party to accompany its refusal with a formal and frank disclosure of sufficient reasons for a step, which, without such reasons, must deeply injure its own character, as well as the rights of the party confiding in its good faith.

“To refuse with honor (says a high authority on public law) to ratify what has been concluded on by virtue of a full power, it is necessary that the government should have *strong and solid reasons*, and that he shew in particular that his minister has violated his instructions.”

Although it is particularly incumbent on the sovereign in such case to shew that his instructions have been violated, yet it is not a mere violation of them on immaterial points that will be sufficient. It is indispensibly requisite, moreover, that the rea-

sons be *strong and solid*, that they manifestly outweigh, not only the general obligation to abide by what has been so done, but also the disappointment and injury accruing to the other party. And it is worthy of notice that the case under discussion is of a higher character and appears with greater solemnity to the honor and justice of the refusing party than the case stated in Vattel, inasmuch as the transaction, now disavowed, was not a treaty or convention to be ratified by both parties, previous to an execution by either. It had, according to the terms of it (and this peculiarity appears to have been contemplated by your government) been actually and immediately carried into execution on the part of the United States. The refusal of his Britannic majesty is, therefore, not simply to ratify what had been ratified by the other party, but to carry into effect on his part an arrangement which had been carried into full effect, with good faith on the part of the United States. Nay, the case is strengthened by the further peculiarity, that some of the circumstances, attending the execution of the arrangement on the part of the United States, render it unsusceptible of a full equivalent for the refusal to execute it on the other side.

It has not escaped observation that the obligation of your government to tender explanations on this occasion is admitted by your attempt to shew that it has been sufficiently done in what passed in conversation between Mr. Canning and Mr. Pinkney and by the instructions given to Mr. Erskine to communicate such explanations.

With every disposition to view in the most favorable light whatever may affect the relations between the two countries, it is impossible to mistake the conversations of those ministers for a discharge of such a debt to the good faith and reasonable expectations of the United States. Besides that they

were mere conversations in a case, requiring the precision and respect of a formal communication, it is certain, that it was neither understood by Mr. Pinkney, nor intended by Mr. Canning, that those conversations were so to be regarded. Mr. Pinkney is explicit on this point. And Mr. Canning himself, after declining to recapitulate in writing what he had verbally remarked, signified to Mr. Pinkney in a letter dated May 27, that his observations on the subject would be more properly made through the successor of Mr. Erskine, who was about to proceed to the United States.

With respect to the instructions on this point given to Mr. Erskine, it might be sufficient to remark that they were never carried into execution; but it may be asked, whether it was a mark of friendly respect to the United States to employ for such a purpose a minister from whom his government had thought proper publicly to withdraw its confidence, and to the peculiar delicacy and embarrassment of whose situation you have yourself referred, as accounting for his not having executed the task imposed upon him.

I must here repeat, what was suggested in my former letter, that the successor of Mr. Erskine is the proper functionary for a proper explanation. Nor can I perceive the force of your remark that the delay incident to your arrival in the United States rendered it more consistent with the friendly sentiments of his majesty to prefer the other channels for communicating the motives for his disavowal. To your own reconsideration I appeal, whether the course most consonant to those friendly sentiments was not the obvious one of employing the new organ, guarding at the same time against any misconstruction of the delay by apprising the American government through its minister of the cause of it. The supposition that the

delay incident to your mission gave rise to the conversation of Mr. Canning and Mr. Pinkney, is not reconcilable to the correspondence of the latter, which contains no such indication. On the contrary it distinctly shews that he was apprised of the intention to replace Mr. Erskine by a successor whom he regarded as the proper channel for the explanatory communications, that he understood Mr. Canning to be under the same impression, and that he learned from yourself, not more than two days after his conversations with Mr. Canning that you were to sail for the United States within three weeks.

Although it may not have been your intention to have given to this subject a posture which it would not have naturally assumed; yet such has been the tendency of some of your remarks, and particularly of the conclusion you have drawn from the two circumstances, 1st, That no trace of complaint from this government against the disavowal appears in the records of the British mission or was distinctly announced by me in our conferences; and 2d, That from the official correspondence of Mr. Erskine with his government, it appears that although he did not communicate in extenso his original instructions, he submitted to me the three conditions therein specified and received my observations on each.

If there be no trace of complaint against the disavowal in the archives of the mission, it is because this government could not have entered such complaint before the reasons for the disavowal had been explained, and especially as the explanations were justly and confidently expected through the new functionary. And as to the supposed reserve on my part on this subject, in our several conferences, I did imagine, that my repeated intimations to you of the necessity of satisfactory expla-

nations, as to the disavowal, were sufficient indications of the dissatisfaction of this government with respect to the disavowal itself.

The stress you have laid on what you have been pleased to state as the substitution of the terms finally agreed on, for the terms first proposed, has excited no small degree of surprise. Certain it is, that your predecessor did present for my consideration the three conditions, which now appear in the printed document—that he was disposed to urge them more than the nature of two of them (both palpably inadmissible and one more than merely inadmissible) could permit, and that on finding his first proposals unsuccessful the more reasonable terms comprised in the arrangement respecting the orders in council were adopted. And what, Sir, is there in this to countenance the conclusion you have drawn in favor of the right of his Britannic majesty to disavow the proceeding? Is any thing more common in public negotiations, than to begin with a higher demand, and, that failing, to descend to a lower? To have, if not two sets of instructions, two, or more than two grades of propositions in the same set of instructions; to begin with what is the most desirable, and to end with what is found to be admissible in case the more desirable should not be attainable. This must be obvious to every understanding and it is confirmed by universal experience.

What were the real and entire instructions given to your predecessor is a question essentially between him and his government. That he had, or at least, that he believed he had sufficient authority to conclude the arrangement, his formal assurances, during our discussions, were such as to leave no room for doubt. His subsequent letter of 15 June, renewing his assurance to me “that the terms of the agreement so happily concluded by the recent

negotiation, will be strictly fulfilled on the part of his majesty," is an evident indication of what his persuasion then was as to his instructions. And with a view to shew what his impressions have been even since the disavowal, I must take the liberty of referring you to the annexed extracts (*see C.*) from his official letters of the 31st July, and of the 14th of August.

The declaration "that the despatch from Mr. Canning to Mr. Erskine of the 23d January, is the only despatch by which the conditions were prescribed to Mr. Erskine for the conclusion of an arrangement on the matter to which it relates," is now for the first time made to this government. And I need hardly add that if that despatch had been communicated at the time of the arrangement, or if it had been known that the propositions contained in it, and which were at first presented by Mr. Erskine, were the only ones on which he was authorised to make an arrangement, the arrangement would not have been made.

As you have disclaimed any authority to offer explanations for the disavowal, as you have been willing to ascribe the want of such authority to the consideration that other channels had been preferred, and as you have even considered the circumstances under which the arrangement took place to be such as could only lead to a disavowal, and therefore as superseding the necessity of any explanation whatever, it is to be regretted, that you had not deemed it proper to render precise and explicit that part of your letter, which seems to imply that you had, in our conversations in relation to the affair of the Chesapeake, following the words of your instructions, held out not only the manner in which the reparation had been accepted, but even the form in which it had been tendered, as warranting his majesty in even retracting the offer



of reparation and that you had elucidated the observation by a reference to the particular expressions which at all events put it totally out of his power to confirm any act containing them.

Whatever may have been your intention in this part of our conversation, or whatever may be the import of the passage to which I have just alluded, I have now the honor of signifying to you, that I am authorised to receive in a proper form, whatever explicit explanations you may choose to make with respect to the grounds of this part of the disavowal; and without enquiring whether your authority be derived from instructions that have been addressed to yourself or that have devolved on you as the successor of the minister, who had declined to execute them.

As you have at the same time, been pleased to say that his Britannic majesty had authorised you to renew the offer of satisfaction which Mr. Erskine was instructed to make, it was also naturally expected that you would in your letter have stated with precision in what that offer differed from the reparation solemnly tendered by Mr. Erskine, and accepted by the United States, and that you would have shewn in what the reparation thus tendered differed from his instructions. And when I had the honor to intimate that, in order to avoid the misconceptions incident to oral proceedings, it was thought expedient that our further discussions on the present occasion should be in the written form, there was no part of the subject to which that intimation applied with more force than the case of the Chesapeake; none on which it was more desirable to avoid misconceptions, and to obtain a precise knowledge of the propositions which you were authorised to make; not only because I did not really understand the particulars of the offer as distinctly as you seem to have supposed, but

also because, on that point, and on that alone, you had expressly stated, that you had propositions to make, and that you were authorised to carry them into immediate execution.

On the subject of the orders in council, the President perceives with sentiments of deep regret, that your instructions contemplate, neither an explanation of the refusal of your government to fulfil the arrangement of that branch of the existing differences, nor the substitution of any other plan of adjustment, nor any authority to *conclude* any agreement on that subject, but merely to receive and discuss proposals, that might be made to you on the part of the United States; and these it appears must include a stipulation on the part of the United States to relinquish the trade with the enemies colonies, even in branches not hitherto interrupted by British orders for capture, and also a sanction to the enforcing of an act of Congress by the British navy.

Were the way properly opened for formal propositions from this government, a known determination on the part of his Britannic majesty to adhere to such extraordinary pretensions, would preclude the hope of success in such advances, whether regard be had to the conditions themselves or to the disposition they indicate, in return for the conciliatory temper which has been evinced by the United States.

As to the demand in relation to the colonial trade, it has been the less apprehended, as it is not in itself connected, nor has it ever before been brought into connection either with the case of the orders in council or with that of the Chesapeake. And it was reasonably to be presumed, if the idea of such a condition had in the first instance proceeded from the erroneous belief, that it was not objectionable to the United States, that

it would not have been persisted in after that error had been ascertained and acknowledged.

The other demand could still less have been apprehended. Besides the inevitable and incalculable abuses incident to such a licence to foreign cruizers, the stipulation would touch one of those vital principles of sovereignty which no nation ought to have been expected to impair. For where would be the difference in principle between authorising a foreign government to execute and authorising it to make laws for us. Nor ought it to be supposed, that the sanctions and precautions of a law of the United States in the cases of the prohibited trade in question would prove inefficacious for its purposes.

Had none of those obstacles presented themselves to the course corresponding with the sentiments and dispositions of the President, I should have felt great pleasure in giving you formal assurances of his readiness to execute the conditional authority with which he is invested for restoring in its full extent, as far as it may depend upon the United States, the commercial intercourse of the two countries; and that he would moreover, be disposed to extend the experiment of a friendly negotiation to every point of difference and of mutual interest between them. If, indeed, in the event of a successful termination of what relates to the case of the Chesapeake, it be thought that a removal of the difficulties arising from the orders in council might be facilitated by comprehending them in a general negotiation, and the operation of the orders can, in the mean time, be suspended, the door might be considered as immediately open to that course of proceeding.

To such a suspension no reasonable objection can be made, if, as you have stated, the orders in council, as now modified, leave the trade of the

United States nearly as great as it would be without the existence of such orders, so long as France and the other powers shall continue their decrees, and inasmuch as a discontinuance of their decrees by those powers, confessedly requires an immediate and entire revocation of the orders in council.

That a suspension of the orders with a view to their being brought into a general negotiation is more reasonable than a temporary submission to their authority by the United States with that view, is obvious from the reflection that such a submission would necessarily involve a relinquishment of the principle which they have stedfastly asserted; whereas a discontinuance of the orders in council in the present actual state of things would not be incompatible with the principle on which they were originally founded.

This principle was as you well know, the necessity of retaliating through neutrals injuries received through a violation of their rights by another belligerent. In the actual state of things, and under the actual modification of the orders in council produced by it, it is admitted by you, that the orders have no practical effect in abridging the commerce of neutrals, and can of course have no retaliating effect on the other belligerents.

Although it cannot be allowed to be true, that the orders in council are no longer injurious to the commerce of the United States, it is certainly true, that they produce no degree of injury to the enemies of Great Britain, that can countenance the retaliating plea alleged in support of them.

What permit me to ask, is the degree of injury actually accruing to the enemies of Great Britain from her retaliating orders? According to those orders as now modified, and more especially taking into view along with them the prohibitory law of this country in relation to France, the essential dif-

ference between their repeal and their existence consists in this—that in the case of their repeal, as pledged by the arrangement of April, the trade of the United States might be carried on directly with the ports of Holland, whilst during their existence, as at present, it is to be carried on through the contiguous and neighbouring ports. To your own calculations, Sir, I submit, whether the considerable effect of this circuit on the prices in Holland, and in the countries supplied through her, can any longer sustain the plea of inflicting distress on an enemy or palliate the injuries done to a friend by a proceeding so contrary to his sentiments of justice, and which subjects his regular commerce not only to inconvenient channels, but to all the abuses which may result from the suspicions, real or pretended, of interested citizens. You cannot but be sensible, that a perseverance under such circumstances in a system, which cannot longer be explained by its avowed object, would force an explanation by some object not avowed. What object might be considered as best explaining it is an enquiry into which I do not permit myself to enter, further than to remark that in relation to the United States it must be an illegitimate object.

It remains to make a few observations which are due to the just interest of the United States, and which are invited by yours relating to the order in council of May last.

You seem to consider that measure as comprising the utmost precaution that was in the power of his Britannic majesty to take, for preventing losses, from his disavowal of the engagement of your predecessor, to citizens of the United States, who had resumed their commercial pursuits on the faith of that act.

Without entering into a full view of the inade-

quacy of the order in that respect, I take the liberty of pointing out the following instances in which it falls essentially short of its declared intention.

1st. The order does not provide for the important case, of vessels returning with cargoes from the ports of Holland.

2d. The exemption from interruption of vessels bound from the United States to Holland was restricted by that order to such as should have departed prior to the 20th of July, at which date it is not certain that the order, which was not officially communicated until the 31st of that month, had even reached any one point of the United States. So that some vessels may have sailed between the limited date and the arrival of the order in the United States, and many from distant ports must have done so after its arrival but before a knowledge of it had become general, all proceeding on the faith of the arrangement, yet all left by the order exposed to capture and condemnation.

3d. The order does not provide for the important case of vessels, which had sailed on the like faith for Dutch ports other than those of Holland.

4th. It does not include in its provisions the extensive list of vessels going indirectly from the United States but directly from foreign ports to those of Holland, nor vessels trading entirely from foreign ports to Holland; and in both these instances proceeding on the faith of the arrangement professed to be respected within the defined period.

It is true that in these last instances the vessels were not to be captured without an attempt after contrary warning to proceed to those ports. But I need not remind you that the injuries incident to the delay and to the breaking up of such voy-

ages cannot but have been considerable, and will have resulted as manifestly from the disappointed faith in the arrangement, as in the cases specially provided for, and consequently with all other losses fairly resulting from the same bona fide confidence in that act they will fall within the just indemnification for which the principle assumed in the order, is a formal pledge.

I conclude Sir, with pressing on your candid attention, that the least which the President could have looked for in consequence of the disavowal of a transaction such as was concluded by your predecessor and carried faithfully into effect by this government, was an explanation from yours of the disavowal, not through the minister disavowed, but through his successor; an explanation founded on reasons strong and solid in themselves, and presented neither verbally nor vaguely, but in a form comporting with the occasion and with the respect due to the character and the good faith of the disappointed party; that it has been found with much concern, and with not less surprise, that you are charged with no such explanations; that you have apparently wished to bring the subjects, which have been formally and definitively arranged into fresh negotiation, as if no such arrangement had taken place; that one of the cases thus slighted, viz. that of the frigate Chesapeake, is a case for which reparation, not denied to be due, had been previously so long withheld, or rather in which the aggression itself has been spun out to the present moment by the continued detention of the mariners, whose seizure, making a part of the hostility committed against the American frigate, must be regarded in a light analogous to a continued detention of the ship itself; that in the other case, viz. that of the orders in council you are not authorised to tender explanations for the disavowal, or to

propose any new arrangement, nor to conclude any agreement, but solely to receive and discuss proposals, which might be made to you, not concealing at the same time, that to be satisfactory they must include two conditions, both inadmissible; one altogether irrelevant to the subject, and the other requiring nothing less than a surrender of an unalienable function of the national sovereignty.

Notwithstanding these repulsive considerations, such is the disposition of the President to facilitate a final and comprehensive accommodation between the two nations, that he is ready, as I have already had the honor of signifying to you, to favor any mode of bringing about so happy an event that may be found consistent with the honor and the essential interest of the United States.

I have the honor to be,

With the highest consideration,

Sir, your obedient servant.

(Signed)

R. SMITH.

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(A.)

*Extract of a letter from Mr. Pinkney to Mr. Can-  
ning, dated London, October 13th, 1808.*

“AT our first interview, (on the 29th June,) verbal communication was not discourte-  
nanced but commended: for after I had made my-  
self understood as to the purpose for which the inter-  
view had been requested, you asked me if I thought  
of taking a more formal course, but immediately ad-  
ded that you presumed I did not, for that the course I  
had adopted was well suited to the occasion. My re-  
ply was in substance that the freedom of conversation  
was better adapted to our subject and more likely  
to conduct us to an advantageous conclusion, than  
the constraint and formality of written intercourse,



and that I had not intended to present a note. At the second interview (on the 22d July) it did not occur to me that I had any reason to conclude, and certainly I did not conclude, that verbal communication had not continued to be acceptable as a preparatory course; and it was not until the third interview (on the 29th July) that it was rejected as inadmissible."

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(B.)

*Extract from Mr. Canning to Mr. Pinkney, dated  
November 22d, 1808.*

"IT is highly probable that I did not (as you say I did not) assign to you as the motive of the wish which I then expressed, my persuasion, that written communications are less liable to mistake than verbal ones: because that consideration is sufficiently obvious; and because the whole course and practice of office is, in that respect so established and invariable, that I really could not have supposed the assignment of any specific motive to be necessary to account for my requiring a written statement of your proposals previous to my returning an official answer to them.

"I had taken for granted all along that such would, and such must, be the ultimate proceeding on your part, however you might wish to prepare the way for it by preliminary conversations."

(C.)

*Extract of a letter from Mr. Erskine to Mr. Smith,  
dated Washington, July 31st, 1809.*

"NEITHER the present time, nor the occasion will afford me a favorable opportunity for explaining to you the grounds and reasons upon which I conceived I had conformed to his majesty's

wishes, and to the spirit, at least, of my instructions upon that subject; nor, indeed, would any vindication of my conduct, (whatever I may have to offer) be of any importance, further than as it might tend to shew that no intention existed on my part to practice any deception towards the government of the United States."

*From the same to the same, dated August 14th 1809.*

"Under these circumstances, therefore, finding that I could not obtain the recognitions specified in Mr. Canning's despatch of the 23d January, (which formed but *one part* of his instructions to me) in the formal manner required, I considered that it would be in vain to lay before the government of the United States the despatch in question, which I was at *liberty* to have done in *extenso*, had I thought proper. But as I had such strong grounds for believing that the object of his majesty's government could be attained, though in a different manner, and the spirit at least of my *several* letters of instructions be fully complied with, I felt a thorough conviction upon my mind, that I should be acting in conformity with his majesty's wishes; and, accordingly concluded the late provisional agreement on his majesty's behalf, with the government of the United States.

The disavowal by his majesty is a painful proof to me that I had formed an erroneous judgment of his majesty's views and the intention of my instructions; and I have most severely to lament that an act of mine (though unintentionally) should produce any embarrassment in the relations between the two countries."

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*Mr. Jackson to the Secretary of State.*

*Washington, 23d October, 1809.*

SIR,

THE letter which you did me the honor to address to me on the 19th instaut, was delivered to

me on the following day. I shall, without loss of time, transmit it to my court, where the various and important considerations which it embraces will receive the attention due to them. In the interval, I would beg leave to submit to you the following observations, as they arise out of the communications that have already occurred between us.

In fulfilling a duty which I conceive to be due to my public character, I have never suggested, nor meant to suggest, that the mode of negotiating prescribed by you on this particular occasion—an occasion selected for the purpose of removing existing differences, was otherwise objectionable, than as it appeared to me to be less calculated, than it does to you, to answer the professed purpose of our negotiation.

It was the general principle of debarring a foreign minister in the short space of one week after his arrival, and without any previous misunderstanding *with him*, from all personal intercourse, that I thought it right to protest. Since, however, I find by your letter that it is not intended to apply that principle to me, I will only observe, that in the case which you mention to have occurred between Mr. Canning and Mr. Pinkney, the conferences were held under an expectation, at least on the part of the former, of their leading to a written communication, whereas, in ours, I, from the beginning, stated that I had no such communication to make. There is also this essential difference between the two cases, that Mr. Pinkney was charged to convey an important proposal to his majesty's government, the particulars of which it might be very material to have correctly stated, whilst the object of that part of my conversation, to which you seem to attach the most importance, was to say, that I was not charged to make any proposal whatever.

It could not enter into my view, to withhold from you an explanation, merely because it had been al-

ready given, but because, having been so given, I could not imagine, until informed by you, that a repetition of it would be required at my hands. I am quite certain that his majesty's government having complied with what was considered to be the substantial duty imposed upon it on this occasion, would, had this been foreseen, have added to the proofs of conciliatory good faith already manifested, the farther complacency to the wishes of the United States, of adopting the form of communication most agreeable to them; and of giving through me the explanation in question. I have, therefore, no hesitation in informing you, that his majesty was pleased to disavow the agreement concluded between you and Mr. Erskine, because it was concluded in violation of that gentleman's instructions, and altogether without authority to subscribe to the terms of it. These instructions, I now understand by your letter, as well as from the obvious deduction which I took the liberty of making in mine of the 11th instant, were at the time, in substance, made known to you; no stronger illustration, therefore, can be given of the deviation from them which occurred, than by a reference to the terms of your agreement.

Nothing can be more notorious than the frequency with which, in the course of a complicated negotiation, ministers are furnished with a gradation of conditions, on which they may be successively authorised to conclude. So common is the case which you put hypothetically, that in acceding to the justice of your statement, I feel myself impelled to make only one observation upon it, which is, that it does not strike me as bearing upon the consideration of the unauthorised agreement concluded here, inasmuch as in point of fact, Mr. Erskine had no such graduated instruction. You are already acquainted with that which was given, and I have had the honor of informing you that it was the only one by which the conditions on which he was to conclude were prescribed.

So far from the terms, which he was actually induced to accept, having been contemplated in that instruction, he himself states that they were substituted by you in lieu of those originally proposed.

It may perhaps be satisfactory, that I should say here, that I most willingly subscribe, on this occasion, to the highly respectable authority which you have quoted, and I join issue with you upon the essentials which that authority requires to constitute a right to disavow the act of a public minister.

It is not immaterial to observe on the qualification contained in the passage you have quoted, as it implies the case of a minister concluding *in virtue of a full power*. To this it would suffice to answer, that Mr. Erskine *had no full power*; and his act consequently does not come within the range of your quotation; although it cannot be forgotten, that the United States have, at no very distant period, most freely exercised the right of withholding their ratification from even the authorised act of their own diplomatic agent, done under the avowed sanction of a full power.

I conceive that what has been already said establishes, beyond the reach of doubt or controversy, that his majesty's minister did violate his instructions; and the consequent right in his majesty to disavow an act so concluded. That his majesty had *strong and solid reasons* for so doing will appear not only from his instructions having been violated, but from the circumstance that the violation of them involved the sacrifice of a great system of policy, deliberately adopted and acted upon, in just and necessary retaliation of the unprecedented modes of hostility resorted to by his enemy.

There appears to have prevailed throughout the whole of this transaction, a fundamental mistake, which would suggest that his majesty had proposed to propitiate the government of the United States, in order to induce it to consent to the renewal of the

commercial intercourse between the two countries ; as if such had been the relations between Great Britain and America, that the advantages of that intercourse were wholly on the side of the former ; and as if, in any arrangement, whether commercial or political, his majesty could condescend to barter objects of national policy and dignity for permission to trade with another country.

Without minutely calculating what may be the degree of pressure felt at Paris by the difference in the price of goods whether landed at Havre or at Hamburg ; I will, in my turn, appeal to your judgment, Sir, whether it be not a *strong* and *solid reason*, worthy to guide the councils of a great and powerful monarch, to set bounds to that spirit of encroachment and universal dominion which would bend all things to its own standard ? Is it nothing in the present state of the world, when the agents of France authoritatively announce to their victims “ that Europe is submitting and surrendering by degrees ; ” that the world should know, that there is a nation which by that divine goodness, so strongly appealed to in the paper to which I allude, (*Angereau's proclamation to the Catalonians*) is enabled to falsify the assertion ? Is it not important at such a moment, that Europe and America should be convinced, that from whatever countries honorable and manly resistance to such a spirit may have been banished, it will still be found in the sovereign of the British nation and in the hearts of his subjects ?

As to the precautions taken in England to insure from injury upon this occasion, the citizens of the U. S. and which appear to you to be even yet insufficient, I am confident that in every doubtful case the usual liberality of our tribunals will be exercised in determining upon the circumstances of it ; and it was at Mr. Pinkney's express requisition, that additional instructions were given to the commanders of his majesty's ships of war and privateers to extend

to vessels trading to the colonies, plantations and settlements of Holland, the same exemption from capture and molestation, as was granted to vessels sailing for any of the ports of Holland.

On the subject of return cargoes from those ports, I must observe, that although it was intended to prevent as far as was practicable the inconveniences likely to be created by the unauthorised agreement made here in April last, yet it was not and could not be intended to obviate all possible inconveniences even such as might have arisen if no such agreement had ever been made.

If an American vessel had sailed from America for Holland in time of profound peace, or in time of war, the ports of Holland not being at the date of sailing under blockade, it might yet have happened that, in the period between the commencement of such voyage and the arrival of the vessel at the port of destination, a blockade might have been established before that port. The vessel arriving would, in that case, have been warned not to enter the port, and would have been turned away with the loss of the whole object of the voyage. This would be no extraordinary hardship, and would afford no legitimate ground of complaint.

The order in council is far less strict than such a blockade would be, forasmuch as it provides for the original voyage, commenced in expectation of being admitted to the port of destination, by permitting the entry into the ports of Holland; and it is no just ground of complaint, that it does not superadd to that permission the liberty to re-export a cargo of the enemy's goods or produce.

I beg leave briefly to recapitulate the substance of what I have had the honor to convey to you, as well in a verbal, as in written communications.

I have informed you of the reasons of his majesty's disavowal of the agreement so often mentioned; I

have shewn them, in obedience to the authority which you have quoted, to be both strong and solid, and such as to outweigh, in the judgment of his majesty's government, every other consideration which you have contemplated; I have shewn that that agreement was not concluded in virtue of a full power, and that the instructions given on the occasion, were violated.

Beyond this point of explanation which was supposed to have been attained; but which is now given by the present letter, in the form understood to be most agreeable to the American government, my instructions are prospective; they look to substituting for notions of good understanding, erroneously entertained, practical stipulations on which a real reconciliation of all differences may be substantially founded; and they authorise me not to renew proposals which have already been declared here to be unacceptable; but to receive and discuss any proposal made on the part of the United States, and *eventually* to conclude a convention between the two countries. It is not of course intended to call upon me to state as a preliminary to negotiation, what is the whole extent of those instructions; they must, as I have before said, remain subject to my own discretion, until I am enabled to apply them to the overtures which I may have the honor of receiving from you.

I have the honor to be,  
 With great respect, Sir,  
 Your most obedient servant.

(Signed)

F. J. JACKSON.

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*Mr. Jackson to the Secretary of State.*

*Washington, October 27th, 1809.*

SIR,

FINDING by your letter of the 19th instant that, notwithstanding the frequent statements made by me in our conferences of the terms of satisfaction



which I am empowered to offer to this country for the unauthorised attack made by one of his majesty's ships of war, upon the frigate of the United States the Chesapeake, I have not had the good fortune to make myself distinctly understood by you, I have the honor to enclose herewith a paper of memoranda, containing the conditions on the basis of which I am ready to proceed to draw up with you the necessary official documents in the form proposed in my letter of the 11th instant, or in any other form upon which we may hereafter agree.

I have the honor to be, with great respect, Sir, your most obedient humble servant.

(Signed) F. J. JACKSON.

*Enclosed in Mr. Jackson's letter of the 27th Oct. 1809.*

THE President's proclamation of July, 1807, prohibiting to British ships of war the entrance into the harbors of the United States having been annulled, his majesty is willing to restore the seamen taken out of the Chesapeake, on reserving to himself a right to claim in a regular way, by application to the American government, the discharge of such of them (if any) as shall be proved to be either natural born subjects of his majesty, or deserters from his majesty's service.

His majesty is willing to make a provision for the families of such men as were slain on board the Chesapeake in consequence of the unauthorised attack upon that frigate, provided that such bounty shall not be extended to the family of any man who shall have been either a natural born subject of his majesty, or a deserter from his majesty's service.

*The Secretary of State to Mr. Jackson.*

*Department of State, Nov. 1st, 1809.*

SIR,

YOUR letter of the 23d ultimo, which was duly received, would have been sooner acknowledg-

ed, had I not by my sickness been rendered for several days utterly unfit for business.

Although the delay and the apparent reluctance, in specifying the grounds of the disavowal of the arrangement with respect to the orders in council, do not correspond with the course of proceeding deemed most becoming the occasion; yet as the explanation has at length been thus made, it only remains, as to that part of the disavowed arrangement, to regret that such considerations should have been allowed to outweigh the solid objections to the disavowal; it being understood at the same time that his Britannic majesty perseveres in requiring as indispensable conditions on the part of the United States, an entire relinquishment of the right to trade with enemies colonies, and also a permission to the British navy to aid in executing a law of Congress; pretensions which cannot but render abortive all proposals whatever upon this subject, whether made by the United States or by his Britannic majesty.

Whilst you have deemed it proper to offer an explanation with respect to the disavowal of one part of the arrangement, I must remind you that there is not to be found in your letter any like specification of the reasons for the disavowal, nor particularly is it shewn that the instructions were violated as to the other part, viz. the case of the Chesapeake; the case in which in an especial manner an explanation was required, and in which only you professed to have authority to make to this government any overtures.

For the first time it is now disclosed that the subjects arranged with this government by your predecessor, are held to be not within the authority of a minister plenipotentiary, and that not having had a "full power distinct from that authority his transactions on those subjects might of right be disavowed by his government." This disclosure, so contrary to every antecedent supposition and just inference, gives a new aspect to this business. If the authority

of your predecessor, did not embrace the subjects in question, so as to bind his government, it necessarily follows, that the only credentials, yet presented by you being the same with those presented by him, give you no authority to bind it; and that the exhibition of a "full power" for that purpose, such as you doubtless are furnished with, is become an indispensable preliminary to further negotiation; or to speak more strictly, was required in the first instance by the view of the matter now disclosed by you. Negotiation without this preliminary would not only be a departure from the principle of equality which is the essential basis of it, but would moreover, be a disregard of the precautions and of the self respect enjoined on the attention of the United States by the circumstances which have hitherto taken place.

I need scarcely add, that in the full power alluded to, as a preliminary to negotiation, is not intended to be included either the whole extent or any part of your instructions for the exercise of it. These of course, as you have justly remarked, remain subject to your own discretion.

I abstain, Sir, from making any particular animadversions on several irrelevant and improper allusions in your letter not at all comporting with the professed disposition to adjust in an amicable manner the differences unhappily subsisting between the two countries. But it would be improper to conclude the few observations, to which I purposely limit myself, without adverting to your repetition of a language implying a knowledge on the part of this government that the instructions of your predecessor did not authorise the arrangement formed by him. After the explicit and peremptory asseveration that this government had no such knowledge, and that with such a knowledge no such arrangement would have been entered into, the view, which you have again presented of the subject, makes it my duty to apprise you, that such insinuations are inadmissible in the intercourse

of a foreign minister with a government that understands what it owes to itself.

I have the honor to be, &c.

(Signed)

R. SMITH.

*Mr. Jackson to the Secretary of State.*

*Washington, 4th Nov. 1809.*

SIR,

WHEN I forwarded to my court, your letter of the 19th ultimo, and the answer which I returned to it, I imagined, and I may add I hoped, that the retrospective correspondence, into which you thought it necessary to enter with me had been closed. You will, no doubt, recollect with what reluctance I acquiesced in your intimation on this head; not, as I believe has been seen, from any difficulty in maintaining the justice of the cause which is entrusted to me, but because I was, and still am, of opinion, that this sort of correspondence is not calculated to remove differences and soothe irritations of the most unfortunate tendency. As, however, I had no choice but to renounce, for the present, the hope of effectuating this desirable object, or to pursue it in the manner prescribed in your letter of the 9th ultimo, so I am now unwillingly compelled to enter upon the consideration of another letter from you under date of the 1st instant, which but too strongly confirms the opinion I before entertained.

Since, Sir, it has been judged expedient to confine to a written form this important and interesting discussion; since that mode has been declared by you to be indispensable, I will first appeal to the written communications which have passed between us; and I do this with the greater satisfaction, because I consider it to be the chief cause of the present remarkable state of things, that in speaking of engagements contracted or supposed to have been contracted between the two countries, *understandings* or

*implied engagements*, have been allowed to take place of written compacts, and have been considered, in some instances, as having the same validity. It is furthermore necessary to place in the most unequivocal light a topic, which I observe to be constantly and prominently restated in your letters, notwithstanding the repeated, but as it should seem, fruitless endeavors used in mine, to clear it from the slightest shadow of obscurity.

You say "that it is understood that his Britannic majesty perseveres in requiring as indispensable conditions on the part of the United States, an entire relinquishment of the right to trade with the enemies colonies, and also a permission to the British navy to aid in executing a law of Congress."

This same statement is contained in your letter of the 9th instant, and represented as the substance of what had fallen from me in our previous conferences. In my answer to that letter, I took the liberty of shewing that such a supposition was erroneous, and I have looked in vain to my letter of the 23d, to find in it any suggestion of a similar tenor. I believe, therefore, that by reference to my two letters you will find, that the statement now again brought forward, is contained in neither of them, that it made no part of my previous conversations with you, and that I have in no way given room to suppose, that I ever made any such statement at all.

That before the orders in council can be revoked, their object must be obtained in some other way, is unquestionably true; but you may be assured, Sir, that there is no wish whatever entertained in England, that the British navy should be employed in executing a law of Congress. If the proposal that was made upon that subject, and made as you now know, because it was believed to be acceptable here, had been adopted, and had become a matter of compact, between the two countries, and thereby a part, not of the law of Congress, but of the public law binding

upon both parties, and which both would have had a common interest in seeing duly executed; in that case the agency of the British navy would not have had the invidious aspect, which is now attempted to be given to it. At present there is no engagement between the two countries, no laws of Congress which bear a reference to any such engagement, and consequently it cannot be wished to take any share whatever in the execution of those laws.

In regard to the colonial trade I need only observe, that all or nearly all the enemies colonies are blockaded by British squadrons, it cannot, therefore, be so much an object of solicitude as you imagine, to obtain the relinquishment of the trade of any country to those colonies. On the contrary you will find it stated in my letter of the 11th ultimo, to be a "matter of indifference whether the order in council (on this subject) be continued, or an arrangement by mutual consent substituted in its room."

When I informed you that the agreement concluded here in April last, had been framed in deviation from the instructions given for the occasion, my explanation was intended to apply to both parts of that agreement: that nothing, required by the most scrupulous accuracy, may be wanting, I now add, that the deviation consisted in not recording in the official document signed here, the abrogation of the President's proclamation of the 2d July, 1807, as well as the two reserves specified in the paper of memoranda enclosed in my official letter to you of the 27th ultimo.

There is another motive for the disavowal of this part of the arrangement, considered to be so strong and so self evident upon the very face of the transaction, that I am not commanded to do more than indicate it in the manner I have already done. By this forbearance his majesty conceives that he is giving an additional pledge of his sincere disposition to maintain a good understanding with the United States.

I am somewhat at a loss to give a distinct reply to that part of your letter which relates to Mr. Erskine's authority to conclude with you in virtue of his general letter of credence, because I do not very distinctly understand the tendency of it. I never before heard it doubted that a full power was requisite to enable a minister to conclude a treaty; or that a mere general letter of credence was insufficient for that purpose.

If it were otherwise, and a government were in all cases to be bound by the act, however unauthorised, of an accredited minister, there would be no safety in the appointment of such a minister, and ratifications would be useless. No full power was given in the present case, because it was not a treaty, but the materials for forming a treaty, that was in contemplation.

In his despatch of the 23d January, Mr. Secretary Canning distinctly says to Mr. Erskine, "upon receiving through you, on the part of the American government, a distinct and official recognition of the three abovementioned conditions, his majesty will lose no time in sending to America a minister fully empowered to consign them to a formal and regular treaty."

This minister would of course, have been provided with a full power; but Mr. Erskine was to be guided by his instructions, and had the agreement concluded here been conformable to them, it would without doubt have been ratified by his majesty. I must beg your very particular attention to the circumstance that his majesty's ratification has been withheld, not because the agreement was concluded without a full power, but because it was altogether irreconcilable to the instructions on which it was professedly founded. The question of the full power was introduced by yourself to give weight, by a quotation from a highly respected author, to your complaint of the disavowal; in answer to which I observed that the quotation did not apply, as Mr. Ers-

kine had no full power. Never did I imagine, or any where attempt to rest, the right of disavowal upon that circumstance : indubitably his agreement would nevertheless have been ratified, had not the instructions, which in this case took the place of a full power, been violated.

I am surprised at the transition by which it appears to you that this part of the subject is connected with the authority empowering me to negotiate with you. It will not, I dare say, have escaped your recollection that I informed you at a very early period of our communications, that in addition to the usual credential letter, his majesty had been pleased to invest me with a full power, under the great seal of his kingdom, for the express purpose of concluding a treaty or convention. I well remember your testifying your satisfaction at the circumstance ; and I have only now to add that I am ready, whenever it suits your convenience, to exchange my full power against that with which you shall be provided for the progress of our negotiation.

I am concerned, Sir, to be obliged a second time to appeal to those principles of public law, under the sanction and protection of which I was sent to this country. Where there is not freedom of communication in the form substituted for the more usual one of verbal discussion, there can be little useful intercourse between ministers ; and one, at least, of the epithets which you have thought proper to apply to my last letter, is such as necessarily abridges that freedom. That any thing therein contained may be irrelevant to the subject, it is of course competent in you to endeavor to shew ; and as far as you succeed in so doing, in so far will my argument lose of its validity ; but as to the propriety of my allusions, you must allow me to acknowledge only the decision of my own sovereign, whose commands I obey, and to whom alone I can consider myself responsible. Beyond this, it suffices that I do not deviate from the



respect due to the government to which I am accredited.

You will find that in my correspondence with you, I have carefully avoided drawing conclusions that did not necessarily follow from the premises advanced by me, and last of all should I think of uttering an insinuation, where I was unable to substantiate a fact. To facts, such as I have become acquainted with them I have scrupulously adhered, and in so doing I must continue, whenever the good faith of his majesty's government is called in question, to vindicate its honor and dignity, in the manner that appears to me best calculated for that purpose.

I have the honor to be, &c.

(Signed)

F. J. JACKSON.

*The Secretary of State to Mr. Jackson.*

*Department of State, November 8th, 1809.*

SIR,

IN my letter of the 19th ultimo, I stated to you that the declaration in your letter of the 11th, that the despatch from Mr. Canning to Mr. Erskine of the 23d January was the only despatch by which the conditions were prescribed to Mr. Erskine for the conclusion of an arrangement on the matter to which it related, was then for the first time made to this government. And it was added that if that despatch had been communicated at the time of the arrangement, or if it had been known that the propositions contained in it, were the only ones on which he was authorised to make an arrangement, the arrangement would not have been made.

In my letter of the 1st instant, adverting to the repetition in your letter of the 23d ultimo of a language implying a knowledge in this government that the instructions of your predecessor did not authorise the arrangement formed by him, an intimation was distinctly given to you that, after the explicit and pe-

remptory asseveration that this government had not any such knowledge, and that with such a knowledge, such an arrangement would not have been made, no such insinuation could be admitted by this government.

Finding that in your reply of the 4th instant, you have used a language which cannot be understood but as reiterating and even aggravating the same gross insinuation, it only remains in order to preclude opportunities which are thus abused, to inform you, that no further communications will be received from you, and that the necessity of this determination will, without delay, be made known to your government. In the mean time a ready attention will be given to any communications, affecting the interests of the two nations, through any other channel that may be substituted.

I have the honor to be, &c.

(Signed)

R. SMITH.

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MR. OAKLEY, his majesty's secretary of legation, is desired by Mr. Jackson to state to the secretary of state, that, as Mr. Jackson has been already once most grossly insulted by the inhabitants of the town of Hampton, in the unprovoked language of abuse held by them to several officers bearing the king's uniform, when those officers were themselves violently assaulted and put in imminent danger; he conceives it to be indispensable to the safety of himself, of the gentlemen attached to his mission, and of his family, during the remainder of their stay in the United States, to be provided with special passports or safeguards from the American government. This is the more necessary, since some of the newspapers of the United States are daily using language whose only tendency can be to excite the people to commit violence upon Mr. Jackson's person. In consequence he requests, that the under mentioned names may be inserted in the document to be furnished him.

FRANCIS JAMES JACKSON, CHARLES OAKLEY, ESQ.  
 MRS. JACKSON, *His majesty's secretary of legation.*  
 THEIR THREE CHILDREN, MR. GEORGE OTLEY,  
*Private secretary.*

*Servants.*

ROBERT CLAVRING,	JAMES WRIGHT,
FRANCIS MARTIN,	AMELIA GEORGE,
WILLIAM ATTRE,	MARY SMITH,
CHARLES BEECROFT,	HARRIET PATTEN,
RICHARD LOWE,	MARTHA WOOD,
JOHN PRICE,	FRANCES BLACKWELL.
JOHN LILLY,	

(This note was received at the department of state on the 11th of November.)

Mr. Oakley is desired, by Mr. Jackson, to say to the secretary of state :

That Mr. Jackson has seen with much regret, that facts which it has been his duty to state in his official correspondence, have been deemed by the American government to afford a sufficient motive for breaking off an important negotiation, and for putting an end to all communication whatever with the minister charged by his sovereign with that negotiation so interesting to both nations, and on one point of which an answer has not even been returned to an official and written overture.

One of the facts alluded to has been admitted by the secretary of state himself, in his letter of the 19th October, viz. that the three conditions, forming the substance of Mr. Erskine's original instruction were submitted to him by that gentleman. The other, viz. that that instruction is the only one in which the conditions were prescribed to Mr. Erskine for the conclusion of an arrangement on the matter to which it related, is known to Mr. Jackson by the instructions which he has himself received.

In stating these facts and in adhering to them, as his duty imperiously enjoined him to do, Mr. Jackson could not imagine that offence would be taken at it by the American government, as most certainly

none could be intended on his part; but since he has been informed by the secretary of state that no farther communications will be received from him, he conceives that he has no alternative that is consistent with what is due to the king's dignity, but to withdraw altogether from the seat of the American government, and await the arrival of his majesty's commands upon the unlooked-for turn which has thus been given to his affairs in this country.

Mr. Jackson means to make New York the place of his residence.

*Washington, 13th November, 1809.*

—◆—  
*The Secretary of State to Mr. Pinkney.*

*Department of State, November 23d, 1809.*

SIR,

MY letters in the correspondence with Mr. Jackson, already transmitted to you, sufficiently evince the disappointment that was felt, on finding that he had not been charged to make to this government either the frank explanations or the liberal propositions which the occasion manifestly required. Instead of this obvious course of proceeding, it was in the outset perceived that his object was to bring us to resume the subjects of the arrangement of April, in a way that would imply that we were aware that the arrangement was not binding on his government, because made with a knowledge on our part, that Mr. Erskine had no authority to make it; and thus to convert the responsibility of his government for the disavowal, into a reproach on this for its conduct in the action disavowed.

In the first instance, it was deemed best rather to repel his observations argumentatively than to meet them as an offensive insinuation. This forbearance had not the expected effect of restraining him from a repetition of the offence. And even on his further

insinuations nothing more was done than to premonish him of the inadmissibility of so indecorous a course of proceeding. This also being without effect, nothing remained but the step finally taken. And there was the less hesitation in shutting the door to further opportunities for insulting insinuations, as the disclosures he had made, and the spirit of his discussions had so entirely shut it to the hope of any favorable result from his mission.

I will not dwell on his reluctance to give up the uncertainties of verbal for the precision of written discussion; nor on the *manner* or the *time* of his denial that he had given any room at all for a statement, which, in order to guard against the misconceptions incident to verbal conferences, I had placed before him in writing, with a request that he would point out any inaccuracies, and to which he did not *then* object, otherwise than by intimating, that he could not have made the statement *with the particular view which seemed to be supposed*. Nor will I dwell on the various instances in which partial or inconsistent views of the subject have taken place of its real merits. But it may not be amiss to make some observations on the correspondence, as it relates to the *justification of his government* in having disavowed the act of his predecessor.

With respect to the orders in council, the *ground* of the disavowal is the *difference* between the arrangement and the printed despatch of Mr. Canning to Mr. Erskine of the 23d of January. According to this despatch then the arrangement failed in three points.

1. In not relinquishing the trade of the United States with enemies colonies.

With respect to this point, it is not necessary at this time to discuss the right to that trade. It is sufficient to remark, 1st. that as the trade is admitted to have become, in the view of Great Britain, of little practical importance, why has it been made a ground of the disavowal, and especially, as important consi-

derations only could, upon principles of public law, have justified a measure of so serious a character? 2. That as the colonial trade is a subject no wise connected either with the orders in council or with the affair of the Chesapeake, why has it been permitted to frustrate an arrangement relating to those subjects, and to those only? 3. That as this condition is alleged to have originated in a supposition that it would be agreeable to the American government, why has it been persisted in after the error was made known by the representation of Mr. Erskine to his government, that neither this nor the other conditions of the despatch of the 23d January were attainable here?

2. Another point in the despatch, and not in the arrangement, is, that the British navy might capture our trade to ports prohibited by the United States.

This condition too, appears to have had its origin in a mistake of your meaning in a conversation with Mr. Canning, as noted by yourself, and in an inference thence deduced as to the disposition of this government. But this double mistake must have been brought to light in time to have been corrected in the new mission. In urging it, Mr. Canning has taken a ground forbidden by those principles of decorum which regulate and mark the proceedings of governments towards each other. In his despatch the condition is stated to be for the purpose of *securing the bona fide intention* of America to prevent her citizens from trading with France, and certain other powers; in other words, to secure a pledge to that effect against the *mala fide* intention of the United States. And this despatch too, was authorised to be communicated *in extenso* to the government of which such language was used. Might it not have been reasonably expected that such a condition and such observations would, at least on such an occasion, have been given up by a government

willing to smooth the way to an amicable settlement of existing differences?

In his zeal to vindicate his government, Mr. Jackson too, has attempted a gloss on this most extraordinary idea of calling on a foreign sovereignty, not indeed to make laws for us, but what is equivalent in principle, to supply a supposed inability to execute them. He calls such an interposition of his government not an execution of the law of Congress, but of a compact binding as a public law on both parties, and which both would have a common interest in seeing duly executed. On his own principles there ought to be a reciprocity, not only in the execution of the compact but in the obligation and interest resulting from it. Besides, where there is a reciprocity in compacts between nations touching attributes of sovereignty, there is always as much of sovereignty gained as is parted with, so that there be no loss nor indignity on either side.

3. The remaining point in the despatch not secured by the arrangement, is that which required that whilst our prohibitory laws should be repealed as to Great Britain, they should be left in force as to France and the powers adopting or acting under her decrees.

This is the condition which alone properly belongs to the subject, and it is to be remarked in the first place, that the British project, of which this condition makes a part, contemplated two things in their nature incompatible; one a repeal of the prohibitory acts as to Great Britain, without waiting for the conclusion of a regular treaty; the other a pledge or engagement for their continuance as to other powers. Now from the nature of our constitution, which in this particular ought to have been attended to by the British government, it is manifest, that the executive authority could have given no such pledge, that the continuance of the prohibitory acts, being a subject of legislative consideration, could not have been provided for until the meeting of the legislature, and

that the condition could not therefore but have failed either in the immediate renewal of commerce with Great Britain, or in the immediate engagement that it should not be renewed with France.

The British government ought to have acquiesced in, and indeed ought to have been satisfied with, the attainment of the important object of an immediate repeal of our prohibitory laws and with the consideration that the other object, not immediately attainable, was unnecessary at the time, because the prohibition as to France was then in force, and because there was every reason to infer not only from this fact but from the spirit of the communications made from time to time and from the overtures before submitted to the British government, that without a repeal of the French decrees, our prohibitory laws would be continued in force against France, and especially in the case of a repeal of the British orders, which would necessarily render a continuance of the French decrees doubly obnoxious.

But if on this head doubts could have been entertained, instead of rejecting the arrangement, ought not the repealing act on our part to have been met with a suspension at least of the orders in council, until it could have been seen whether the non-intercourse law, would or would not have been continued against France. Such a suspension would not have given in any point of view more advantage to the United States than was given to Great Britain by the repeal, which had taken place on their part.

If this reasonable course could not have been substituted for the disavowal, why was not a final disavowal suspended with a proposition that the arrangement would be executed by Great Britain in the event of a compliance on the part of the United States with the condition required as to France?

I am not unaware you may be told that the non-intercourse law of the United States did not extend to Holland, though so intimately connected with



France and so subservient to her decrees against neutral commerce.

It would not be improper on this occasion to observe, that this objection can be the less urged by Great Britain as she has herself never in her alleged retaliations adhered to the principle on which they were founded.

Thus she has from the date of them, until very lately, directed them against the American trade even to Russia, although Russia had never adopted the French decrees, nor otherwise violated our neutral trade with Great Britain. So in her order of April last, she has discriminated, not only between the countries devoted to France by the ties of blood, and other powers, but between Holland, Westphalia and Naples in enforcing her prohibitory order against the first, and not against the two last. Whilst therefore she finds it expedient to make these distinctions, she ought to presume that we too may perceive equal propriety in the distinctions we have made.

But it may be of more importance here to compare the British order in council of April last with the arrangement of April made by Mr. Erskine. It will thence be seen how little is the real difference and how trivial it is when compared to the extensive and serious consequences of the disavowal.

Under the order in council of April, all the ports of Europe, except France, including the kingdom of Italy and Holland with their dependencies, are opened to our commerce.

Under the arrangement of April combined with our act of non-intercourse, all the ports of Europe except France and her dependencies, including the kingdom of Italy would have been opened to our commerce.

The difference then is reduced merely to Holland and that again is reduced to the difference between a direct trade to the ports of Holland and an indirect trade to Holland through the neighboring ports of Tonningen, Hamburg, Bremen and Emden.

Now, as the injuring of the enemies of Great Britain is the only avowed object of her interdicting order against our trade, let a computation be made of the effect, which this difference between the order in council and the arrangement, could possibly have in producing such an injury. And then let the question be candidly answered whether, laying aside all considerations of right and justice, sufficient inducements could have been found in that result for rejecting the arrangement and for producing the consequent embarrassments as well to Great Britain as to the United States.

If it be necessary, as Mr. Jackson has stated, to set bounds to a spirit of encroachment and universal dominion, which would bend all things to its own standard, and to falsify by honorable and manly resistance an annunciation that all Europe is submitting by degrees, the effort must be feeble indeed, which is to be found in the inconvenience accruing to the formidable foe from the operation of this order in council, and especially when we combine with it the strange phenomenon of substituting for the lawful trade of the United States a trade of British subjects, contrary to the laws of the adverse party, and amounting, without a special licence, in the eye of British law to high treason.

Thus much for the orders in council. What has taken place with respect to the case of the Chesapeake will equally engage your attention.

You will perceive that throughout the early stages of the correspondence this case was in some respects improperly confounded with, in others improperly separated from, that of the orders in council; and particularly that pains had been taken by Mr. Jackson to substitute verbal and vague observations, on the disavowal of this part of the arrangement, for an explicit and formal explanation, such as was obviously due. It will be seen also that when finally brought to the point, he referred for a justification of the dis-

avowal to the departure of Mr. Erskine from his instructions, without *shewing* what those instructions were, and to allusions to an expression in the arrangement without giving to his meaning the distinctness prerequisite to a just reply.

It appears however that he lays great stress on the proposal enclosed in his letter of the 27th of October, as at once indicating the departure of Mr. Erskine, from his instructions, and as containing the conditions on the basis of which he was ready to enter on an adjustment. And from a note from the secretary of the British legation, it appears that he has complained of not having received an answer to this proposal, as he had before complained that no answer had been given to his verbal disclosures on this head in his interviews with me.

With respect to his intimations in conversation, as they were preceded by no proper assignment of the reasons for not having executed the original adjustment, it cannot be necessary to remark that no such notice, as he wished to obtain, could with any sort of propriety have been taken of them.

With respect to his written project, it will suffice to remark ;

1st. That besides his reluctant and indistinct explanation of the disavowal of the original adjustment, he did not present his proposal until he had made such progress in his offensive insinuation as made it proper to wait the issue of the reply about to be given to it, and that this issue had necessarily put a stop to further communications.

2d. That although he had given us to understand that the ordinary credentials, such alone as he had delivered, could not bind his government in such a case, his proposal had neither been preceded by, nor accompanied with, the exhibition of other commission or full power. Nor indeed has he ever given sufficient reason to suppose that he had any such full power to exhibit in relation to this particular case.—

It is true that in his letter of the 23d October, he has stated an authority *eventually* to conclude a *convention between the two countries*. Without adverting to the ambiguity of the term *eventually*, with the mark of emphasis attached to it, and to other uncertainties in the phraseology, it is clear that the authority referred to, whatever it may be, is derived from instructions *subject to his own discretion*, and not from a patent commission, such as might be properly called for. It is true also that in his letter of the 4th of November subsequent to his proposal, he says he was possessed of a full power, in due form, for the express purpose of concluding a treaty or convention. But it still remains uncertain, whether by the treaty or convention to which it related, was not meant an *eventual* or provisional treaty on the general relations between the two countries, without any reference to the case of the Chesapeake. Certain it is that the British government, in former like cases, as will be seen by the adjustment of that part of the affair at Nootka Sound which is analagous to this case, did not consider any such distinct full power as necessary; nor is there the slightest ground for supposing that Mr. Erskine, although confessedly instructed to adjust this very case of the Chesapeake, was furnished with any authority distinct from his credential letter. That Mr. Jackson has any such commission is the less to be supposed, as it is but barely possible, that possessing it, he should not on some occasion, or in some form, have used a language susceptible of no possible doubt on this point.

But, proceeding to the proposal itself, it is to be kept in mind that the conditions forming its basis, are the very conditions for the deviating from which Mr. Erskine's adjustment was disavowed. Mr. Jackson, if not on others, is on this point explicit.—“ I now add” says he “ that the deviation consisted “ in not recording in the official document signed “ here the abrogation of the President's proclamation of the 2d July 1807, as well as the two reserves

“specified in the paper of memoranda enclosed in my official letter to you of the 27th ult.”

Considering then the conditions in the proposal as an ultimatum, in what light are we compelled to view such an attempt to repair the outrage committed on the frigate Chesapeake, and to heal the disappointment produced by a disavowal of a previous equitable reparation.

It is impossible on such an occasion not to recall the circumstances which constituted the character of the outrage, to which such an ultimatum is now applied. A national ship, proceeding on an important service, was watched by a superior naval force, enjoying at the time the hospitality of our ports, was followed and scarcely out of our waters when she was, after an insulting summons, attacked in a hostile manner; the ship so injured as to require expensive repairs, the expedition frustrated, a number of the crew killed and wounded, several carried into captivity, and one of them put to death under a military sentence. The three seamen, though American citizens, and therefore on every supposition detained as wrongfully, as the ship would have been detained, have notwithstanding now remained in captivity between two and three years; and it may be added, after it has long ceased to be denied that they are American citizens.

Under these circumstances we are called upon to ransom the captives;

1st. By acknowledging that a precautionary proclamation, justified by events preceding the outrage, by the outrage itself, and by what immediately followed it, was unjustifiable, and that a repeal of it was properly a condition precedent to a reparation for the outrage. And this requisition is repeated too, after such an acknowledgment had been uniformly asserted by this government to be utterly inadmissible, and what is particularly remarkable, at a time when the proclamation, as is well understood, was no longer in force. The occasion obviously invited a silent as-

sumption of the existing fact, and this would have excluded the difficulty heretofore found to be insuperable.

2d. By throwing into complete oblivion the conduct of the officer answerable for the murderous transaction, with a knowledge too on our part that, instead of being punished or even brought to trial, he has been honored by his government with a new and more important command.

3d. By admitting a right on the part of Great Britain to claim a discharge from our service of deserters generally, and particularly of her natural born subjects, without excepting such as had been naturalized in due form under the laws of the United States.

It has not been explained, whether it was meant, as the universality of the term "deserters" would import, to include American citizens, who might have left the British service. But what possible consideration could have induced the British government to expect, that the United States could admit a principle that would deprive our naturalized citizens of the legal privileges, which they hold in common with their native fellow citizens. The British government, less than any other, ought to have made such a proposition, because it not only, like others, naturalizes aliens, but, in relation to the United States, has even refused to discharge from the British service native citizens of the United States, involuntarily detained. If an American seaman has resided in Great Britain, or has married therein, or has accepted a bounty in her naval service, his discharge therefrom, on the regular application to the British government, has been invariably refused by its board of admiralty. This I state on the authority of the official reports made to this department. It is therefore truly astonishing that, with a knowledge of these facts; such a pretension should have been advanced at all, but above all, that it should have been made a *sine qua non*, to an act of plain justice already so long delayed.--

This is the more to be regretted, as the omen does not favor the belief, we would willingly cherish, that no predetermination exists in the councils of his Britannic majesty irreconcilable to an amicable arrangement of an affair which, affecting so deeply the honor of the United States, must precede a general regulation of the mutual interests of the two countries.

After the correspondence with Mr. Jackson was terminated, two notes, of which copies are herewith sent to you, were presented to me, in the name and by the hand of Mr. Oakley, the British secretary of legation.

The first requested a document, having the effect of a special passport or safeguard to Mr. Jackson and his family, during their stay in the United States. As the laws of this country allow an unobstructed passage through every part of it, and with the law of nations equally in force, protect public ministers and their families in all their privileges, such an application was regarded as somewhat singular. There was no hesitation, however, in furnishing a certificate of his public character, and to be used in any mode he might chuse. But what surprised most was, the reasons assigned for the application. The insult he alluded to was then, for the first time brought to the knowledge of this government. It had, indeed, been among the rumours of the day, that some unbecoming scene had taken place at Norfolk or Hampton, between some officers belonging to the *Africaine* and some of the inhabitants, and that it originated in the indiscretion of the former. No attention having been called for and no inquiry made, the truth of the case is unknown. But it was never supposed that Mr. Jackson himself, who was on board the frigate, had been personally insulted; nor is it yet perceived in what way he considers it as having happened. It is needless to remark, that any representation on the subject would have instantly received every proper attention.

Another ground on which a protection was asked

for, is the supposed tendency of the language of our newspapers to excite popular violence on Mr. Jackson's person. Had he been longer and better acquainted with the habits and spirit of the American people, he would probably never have entertained an apprehension of that sort. If he meant to animadvert on the free language of the newspapers, he might justly be reminded that our laws, as those of his own country, set bounds to that freedom; that the freedom of British prints, however great with respect to public characters of the United States, has never been a topic of complaint, and that supposing the latitude of the American press to exceed that of Great Britain, the difference is infinitely less in this respect between the two, than between the British press and that of the other nations of Europe.

The second note seems to be essentially intended as a justification of the conduct of Mr. Jackson, in that part of his correspondence which had given umbrage. If he intended it as a conciliatory advance, he ought not to have preceded it by a demand of passports, nor by the spirit or the manner in which that demand was made. He ought in fact, if such was his object, to have substituted an explanation in the place of his reply to my premonitory letter. But whether he had one or other, or both of these objects in view, it was necessary for him to have done more than is attempted in this paper.

It was never objected to him, that he had stated it as a fact, that the three propositions in question had been submitted to me by Mr. Erskine, nor that he stated it, as made known to him by the instructions of Mr. Canning; that the instruction to Mr. Erskine, containing those three conditions, was the only one from which his authority was derived to conclude an arrangement on the matter to which it related. The objection was, that a knowledge of this *restriction* of the authority of Mr. Erskine was imputed to this government, and the repetition of the



imputation even after it had been peremptorily disclaimed. This was so gross an attack on the honor and veracity of this government as to forbid all further communications from him. Care was nevertheless taken, at the same time, to leave the door open for such as might be made through any other channel, however little the probability that any satisfactory communications would be received through any channel here.

To the other enclosures I add a printed copy of a paper purporting to be a circular letter from Mr. Jackson to the British consuls in the United States. The paper speaks for itself. As its contents entirely correspond with the paper last referred to, as they were unnecessary for the ostensible object of the letter, which was to make known Mr. Jackson's change of residence, and as the paper was at once put into public circulation, it can only be regarded as a virtual address to the American people of a representation previously addressed to their government; a procedure which cannot fail to be seen in its true light by his sovereign.

The observations, to which so much extent has been given in this letter, with those contained in the correspondence with Mr. Jackson will make you fully acquainted with the conduct and the character he has developed; with the necessity of the step taken in refusing further communications with him, and with the grounds on which the President instructs you to request that he may be immediately recalled. You are particularly instructed, at the same time, in making those communications, to do it in a manner that will leave no doubt of the undiminished desire of the United States to unite in all the means the best calculated to establish the relations of the two countries on the solid foundation of justice, of friendship, and of mutual interest.

I have the honor to be, with great respect and consideration, Sir, your obedient servant.

(Signed)

R. SMITH.

# DOCUMENTS

ACCOMPANYING

THE MESSAGE OF THE PRESIDENT,

OF

NOVEMBER 29th, 1809.

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*General Armstrong to Mr. Smith, Secretary of State.*

*Paris, 4th September, 1809.*

SIR,

THE letter of which I send you a copy, was received during my absence, and detained in Paris till my return. The note promised in it has not yet been received. Mr. Warden informs me, that the council of prises have been ordered to suspend their proceedings with regard to our vessels.

I have the honor to be,

Sir,

With high consideration,

Your most obt. and very humble servt.

(Signed)

JOHN ARMSTRONG.

The Hon. ROBERT SMITH,

*Secretary of State.*

## (TRANSLATION.)

*Count Champagny to General Armstrong, dated  
Vienna, 8th of August, 1809.*

SIR,

YOU have desired that one of the American vessels, which are in the ports of France, might be authorised to depart for the United States with your despatches. I have taken the orders of his majesty on the subject of this demand, and his majesty always disposed to facilitate your communications with your government, has permitted the departure of the vessel which you shall designate. I informed the ministers of the marine and of the finances of this disposition, requesting them to ensure the execution of it so soon as you shall have made known to them the name of the vessel and the port from which she is to depart.

I have the honor, Sir, to apprise you, that I shall forthwith address to you a note by order of his majesty, on the actual situation of our relations with the United States. Please to profit by the departure of the vessel to make this known to the Federal Government, and permit me also to send by that conveyance, some despatches to the minister plenipotentiary of his majesty to the United States.

Accept, Sir,

The assurances, &c. &c.

(Signed)

CHAMPAGNY.

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*Extracts of a letter from General Armstrong to Mr.  
Smith, Secretary of State, dated  
Paris, 16th September, 1809.*

“ I RECEIVED on the 6th instant, on my return from Holland, two notes from count Champag-

ny, copies of which I have the honor to enclose. In one of these you will find an exposition of the principles which have governed, and which will continue to govern the conduct of his majesty with regard to neutral commerce. To this, which was offered as a definitive answer to our propositions, I have believed that any reply, before I had received the farther instructions of the President, would have been premature."

"Mr. Laurence arrived at L'Orient, on the 9th, and Mr. Hazewell at Paris, with your despatch of the 12th of August last, on the 13th instant. I immediately communicated to count Champagny the President's proclamation interdicting anew all commercial intercourse between the United States and Great Britain, and gave such other explanations as the case appeared to require."

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(TRANSLATION.)

*Extract of a letter from count Champagny to general Armstrong, dated Altenburg, August 22d, 1809.*

"I HAVE the honor to address to you the subjoined note, which his majesty has ordered me to send to you, and which I have announced in my last despatch. If France does not do at this time all that the United States of America can desire, your government will be able to see, that neither prejudice nor animosity influences its conduct; that it is the effect of its attachment to principles which the Americans, more than any other people, are interested in supporting, and of the necessity of reprisals which circumstances impose. The emperor will consider as an happy event, that which shall enable him to contribute to the prosperity of America, in leaving to its commerce all the liberty and all the extension which can render it flourishing."

## (TRANSLATION.)

*Official note from count Champagny to gen. Armstrong.*

ALTENBURG, Aug. 22d, 1809.

SIR,

HIS majesty, the emperor, apprised that you are to send a vessel to America, has ordered me to make known to you the invariable principles which have regulated, and which will regulate his conduct on the great question of neutrals.

France admits the principle that the flag covers the merchandise.

A merchant vessel, sailing with all the necessary papers (*avec les expéditions*) from its government, is a floating colony. To do violence to such a vessel, by visits, by searches and by other acts of an arbitrary authority, is to violate the territory of a colony: This is to infringe on the independence of its government. The seas do not belong to any nation; they are the common property of mankind, and the domain of all.

Enemy merchant vessels belonging to individuals ought to be respected: Individuals who do not fight, ought not to be made prisoners of war. In all her conquests, France has respected private property. The warehouses and the shops have remained with their proprietors. They have been free to dispose of their merchandise as they pleased, and at this moment a great number (*convois*) of waggons loaded principally with cotton, pass through the French armies, through Austria and Germany, on their way to such places as commerce has directed.

If France had adopted the usages of maritime war, all the merchandise of the continent of Europe would have been accumulated in France, and would have become a source of immense wealth. Such would have been, without doubt, the pretensions of the English, if they had had on the land that superiority

which they have obtained at sea. We should have seen, as in the times of barbarism, the vanquished sold as slaves, and their lands parcelled out. Mercantile avidity would have usurped every thing; and the return to barbarous usages would have been the work of the government of a nation that has improved the arts and civilization. That government is not ignorant of the injustice of its maritime code. But what signifies to it, what is just? It only considers what is useful to itself.

Such are the principles of the emperor on the usages and the rights of maritime war. When France shall have acquired a marine proportioned to the extent of her coasts and her population, the emperor will put more and more in practice these maxims, and will use his endeavors to render the adoption of them general.

The right, or rather the pretension of blockading, by a proclamation, rivers and coasts, is as monstrous (revoltante) as it is absurd. A right cannot be derived from the will or the caprice of one of the interested parties, but ought to be derived from the nature of things themselves. A place is not truly blockaded until it is invested by land and by sea; it is blockaded to prevent it from receiving the succours which might retard its surrender. It is only then that the right of preventing neutral vessels from entering it exists: for the place so attached, is in danger of being taken, and the dominion of it is doubtful, and contested by the master of the town and him who blockades or besieges it. Hence the right of preventing even neutrals from having access to it.

The sovereignty and the independence of the flag, are, like the sovereignty and the independence of the territory, the property of all neutrals. A state may give itself to another, may destroy the act of its independence, may change its sovereign; but the rights of sovereignty are indivisible and unalienable, none can give up any part of them.

England has placed France in a state of blockade. The emperor, by his decree of Berlin, has declared the Britannic isles in a state of blockade. The first measure kept neutral vessels at a distance from France, the second has interdicted to them England.

By her orders in council of the 11th November, 1807, England has laid a toll on neutral vessels, and has obliged them to pass through her ports before they should go to the places of their destination. By a decree of the 17th of December of the same year, the emperor has declared vessels, whose flag shall have been violated, degraded, trodden under foot, as no longer belonging to their nation, (denationalize.)

To screen itself from the acts of violence, with which this state of things threatened its commerce, America laid an embargo in her ports; and although France, who had done nothing more than resort to reprisals, saw her interests and the interests of her colonies wounded by this measure, nevertheless the emperor applauded this generous determination of renouncing all commerce, rather than acknowledge the dominion (domination) of the tyrants of the seas. The embargo has been raised; a system of exclusion has been substituted for it. The continental powers leagued against England, make a common cause; they aim at the same object; they will reap the same advantages; they ought also to run the same risks. The ports of Holland, of the Elbe, of the Weser, of Italy and of Spain, will not enjoy, (ne jorront) any advantages of which those of France may be deprived. They will both, (*les uns et les autres*) be either open or shut at the same time, to the commerce of which they may be the object.

Thus, Sir, France acknowledges in principle the liberty of the commerce of neutrals and the independence of maritime powers. She has respected them until the moment when the maritime tyranny of England (which respected nothing) and the arbitrary acts

of its government have forced her to measures of reprisal, which she has adopted, but with reluctance.

Let England revoke her declarations of blockade against France;—France will revoke her decree of blockade against England. Let England revoke her orders in council of the 11th November, 1807;—the decree of Milan will fall of itself. American commerce will then have regained all its liberty, and it will be sure of finding favor and protection in the ports of France. But it is for the United States by their firmness to bring on these happy results. Can a nation that wishes to remain free and sovereign, even balance between some temporary interests, and the great interests of its independence, and the maintenance of its honor, of its sovereignty and of its dignity?

Please to accept, Sir,

The assurances of my high consideration.

(Signed)

CHAMPAGNY.