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Documents accompanying the Message of the President of the 22d March, relative to the Chesapeake.

(Continued.)

No. III.

Correspondence between Mr. Madison and Mr. Rose.

Washington, Jan. 26, 1808.

SIR—Having had the honor to state to you, that I am expressly precluded by my instructions from entering upon any negociation for the adjustment of the differences arising from the encounter of his majesty's ship Leopard and the frigate of the United States, the Chesapeake, as long as the proclamation of the President of the U. States, of the 2d of July, 1807, shall be in force, I beg leave to offer you such farther explanation of the nature of that condition, as appears to me calculated to place the motives, under which it has been enjoined to me, thus to bring it forward in their true light.

In whatever spirit that instrument was issued, it is sufficiently obvious, that it has been productive of considerable prejudice to his majesty's interests, as confided to his military and other servants in the U. States, to the honor of his flag, and to the privileges of his ministers accredited to the American government. From the operation of this proclamation have unavoidably resulted effects of retaliation, & self-assumed redress, which might be held to affect materially the question of the reparation due to the U. S. especially inasmuch as its execution has been persevered in after the knowledge of his majesty's early, unequivocal, and unsolicited disavowal of the unauthorised act of admiral Berkley—his disclaimer of the pretension exhibited by that officer to search the national ships of a friendly power for deserters, and the assurances of prompt and effectual reparation, all communicated without loss of time, to the minister of the United States in London, so as not to leave a doubt as to his majesty's just and amicable intentions. But his majesty, making every allowance for the irritation which was excited, and the misapprehensions which existed, has authorised me to proceed in the negociation upon the sole discontinuance of measures of so inimical a tendency.

You are aware, sir, that any delay, which may have arisen in the adjustment of the present differences, is not imputable to an intention of procrastination on the part of his majesty's government; on the contrary, its anxiety to terminate as expeditiously as possible the discussion of a matter so interesting to both nations, has been evinced by the communication made by Mr. Secretary Canning to Mr. Monroe, before that minister of the United States was even informed of the encounter, and now, by the promptitude with which it has dispatched a special mission to this country, for that express purpose.

I can have no difficulty in stating anew to you, with respect to the provisions of my instructions, calculated as they are to insure an honorable adjustment of the important point in question, and to remove the impressions which the late cause of difference may have excited in the minds of this nation, that I am authorised to express my conviction, that they are such as will enable me to terminate the negociation amicably and satisfactorily.

Having learnt from you, sir, that it is solely as a measure of precaution, the provisions of the proclamation are now enforced, I must persuade myself, that a due consideration of his majesty's conduct in this transaction, will remove as well any misapprehensions which may have been entertained respecting his majesty's dispositions towards the U. States, as the grounds upon which that enforcement rests, and the more so, as it has long been a matter of notoriety, that the orders issued to the officers of his majesty's navy, in his proclamation of the 16th October, 1807, afford ample security, that no attempt can again be made to assert a pretension, which his majesty from the first disavowed.

I may add, that if his majesty has not commanded me to enter into the discussion of the other causes of complaint, stated to arise from the conduct of his naval commanders in these seas, prior to the encounter of the Leopard and the Chesapeake, it was because it has been deemed improper to mingle them, whatever may be their merits, with the present matter, so much more interesting and important in its nature; an opinion originally and distinctly expressed by Mr. Monroe, and assented to by Mr. Secretary Canning. But if, upon this more recent and more weighty matter of discussion, upon which the proclamation mainly and materially rests, his majesty's amicable intentions are unequivocally evinced, it is sufficiently clear, that no hostile disposition can be supposed to exist on his part, nor can any views be attributed to his government, such, as requiring to be counteracted by measures of precaution, could be deduced from transactions which preceded that encounter.

In offering these elucidations, I should observe, that the view in which I have brought forward the preliminary, which I have specified, is neither as to demand concession or redress, as for a wrong committed: into such the claim to a discontinuance of hostile provisions cannot be construed; but it is simply to require a cessation of enactments injurious in their effects, and which, if persisted in, especially after these explanations, must evince a spirit of hostility, under which his majesty could not authorise the prosecution of the present negociation, either consistently with his own honor, or with any well founded expectation of the renewal or duration of that good understanding between the two countries, which it is equally the interest of both to foster and to ameliorate.

I have the honor to be, with the highest consideration, Sir, your obedient and most humble servant,

(Signed,) G. H. ROSE.

(Copy.)

Department of State, March 5, 1808.

SIR—I have had the honor to receive and lay before the President, your letter of the 26th January, in which you state, that you are "expressly precluded by your instructions from entering upon any negociation for the adjustment of the differences arising from the encounter of his Britannic majesty's ship the Leopard, and the frigate of the U. States, the Chesapeake, as long as the proclamation of the President of the 2d of July, 1807, shall be in force."

This demand, sir, might justly suggest the simple answer, that before the proclamation of the President could become a subject of consideration, satisfaction should be made for the acknowledged aggression which preceded it. This is evidently agreeable to the order of time, to the order of reason, and, it may be added, to the order of usage, as maintained by G. Britain, whenever in analogous cases, she has been the complaining party.

But as you have subjoined to the preliminary demand, certain explanations, with a view, doubtless to obviate such an answer, it will best accord with the candor of the President, to meet them with such a review of the whole subject, as will present the solid grounds on which he regards such a demand, as inadmissible.

I begin with the occurrences from which the proclamation of July 2d, resulted. These are in general terms referred to, by the instrument itself. A more particular notice of the most important of them, will here be in place.

Passing over then, the habitual but minor irregularities of his Britannic majesty's ships of war, in making the hospitalities of our ports, subservient to the annoyance of our trade, both outward and inward, a practice not only contrary to the principles of public law, but expressly contrary to British ordinances enforced during maritime wars, to which she bore a neutral relation, I am constrained, unwelcome as the task is, to call your attention to the following more prominent instances.

In the summer of the year 1804, the British frigate the Cambrian, with other cruizers in company, entered the harbor of N. York. The commander, captain Bradley, in violation of the port laws, relating both to health and revenue, caused a merchant vessel, just arrived, and confessedly within the limits and under the authority of the U. States, to be boarded by persons under his command, who, after resisting the officers of the port, in the legal exercise of their functions, actually impressed and carried off a number of seamen and passengers into the service of the ships of war. On an appeal to his voluntary respect for the laws, he first failed to give up the offender to justice, and finally repelled the officer charged with the regular process for the purpose.

This procedure was not only a flagrant insult to the sovereignty of the nation, but an infraction of its neutrality also, which did not permit a belligerent ship thus to augment its force within the neutral territory.

To finish the scene, this commander went so far as to declare, in an official letter, to the minister plenipotentiary of his Britannic majesty, and by him communicated to this government, that he considered his ship, whilst lying in the harbor of New York, as having dominion around her, within the distance of her buoys.

All these circumstances were duly made known to the British government in just expectation of honorable reparation. None has ever been offered. Captain Bradley was advanced from his frigate to the command of a ship of the line.

At a subsequent period, several British frigates under the command of captain Whitby, of the Leander, pursuing the practice of vexing the inward and outward trade of our ports, and hovering for that purpose about the entrance of that of New York, closed a series of irregularities, with an attempt to arrest a coasting vessel, on board of which an American citizen was killed by a cannon ball which entered the vessel, whilst within less than a mile from the shore.

The blood of a citizen thus murdered, in a trade from one to another port of his own country, and within the sanctuary of its territorial jurisdiction, could not fail to arouse the sensibility of the public, and to make a solemn appeal to the justice of the British government. The case was presented moreover to that government by this, in the accent which it required; and with due confidence that the offender would receive the exemplary punishment which he deserved. That there might be no failure of legal proof of a fact sufficiently notorious of itself, unexceptionable witnesses to establish it were sent to Great Britain at the expence of the United States.

Captain Whitby was notwithstanding honorably acquitted; no animadversion took place on any other officer belonging to the squadron; nor has any apology or explanation been made since the trial was over, as a conciliatory offering to the disappointment of this country at such a result.

A case of another character occurred in the month of September, 1806. The Impetueux, a French ship of 74 guns, when aground within a few hundred yards of the shore of North Carolina, and therefore visibly within the territorial jurisdiction and hospitable protection of the United States, was fired upon, boarded and burnt, from three British ships of war, under the command of captain Douglass. Having completed this outrage on the sovereignty and neutrality of the United States, the British commander felt no scruple in proceeding thence into the waters near Norfolk, nor in the midst of the hospitalities enjoyed by him, to add to what had passed a refusal to discharge from his ships, impressed citizens of the United States not denied to be such, on the plea that the government of the United States had refused to surrender to the demand of admiral Berkeley, certain seamen alleged to be British deserters; a demand which it is well understood your government disclaims any right to make.

It would be very superfluous to dwell on the features which mark this aggravated insult. But I must be permitted to remind you, that in so serious a light was a similar violation of neutral territory, by the destruction of certain French ships on the coast of Portugal, by a British squadron under the command of admiral Boscawan, regarded by the court of Great Britain, that a minister extraordinary was dispatched for the express purpose of expiating the aggression on the sovereignty of a friendly power.

Lastly presents itself, the attack by the British ship of war Leopard, on the American frigate Chesapeake; a case too familiar in all its circumstances to need a recital of any part of them. It is sufficient to remark that the conclusive evidence which this event added to that which had preceded, of the uncontrolled excesses of the British naval commanders, in insulting our sovereignty, and abusing our hospitality, determined the President to extend to all British armed ships, the precaution heretofore applied to a few by name, of interdicting to them the use and privileges of our harbors and waters.

This was done by his proclamation of July 2, 1807, referring to the series of occurrences, ending with the aggression on the frigate Chesapeake, as the considerations requiring it. And if the apprehension from the licentious spirit of the British naval commanders, thus developed and uncontrolled, which led to this measure of precaution, could need other justification than was afforded by what had passed, it would be amply found in the subsequent conduct of the ships under the command of the same capt. Douglass.

This officer, neither admonished by reflections on the crisis produced by the attack on the Chesapeake, nor controlled by respect for the law of nations, or the laws of the land, did not cease within our waters to bring to, by firing at vessels pursuing their regular course of trade; and in the same spirit which had displayed itself in the recent outrage committed on the American frigate, he not only indulged himself in hostile threats, and indications of a hostile approach to Norfolk, but actually obstructed our citizens in the ordinary communication between that and neighboring places. His proceedings constituted in fact, a blockade of the port, and as real an invasion of the country, according to the extent of his force, as if troops had been debarked, and the town besieged on the land side.

Was it possible for the chief magistrate of a nation, who felt for its rights and its honor, to do less than interpose some measure of precaution at least against the repetition of enormities which had been so long uncontrolled by the government whose officers had committed them, and which had at last taken the exorbitant shape of hostility and of insult seen in the attack on the frigate Chesapeake? Candor will pronounce that less could not be done; and it will as readily admit that the proclamation comprising that measure, could not have breathed a more temperate spirit, nor spoken in a more becoming tone. How far it has received from those whose intrusions it prohibited, the respect due to the national authority, or been made the occasion of new indignities, needs no explanation.

The President having interposed this precautionary interdict, lost no time in instructing the minister plenipotentiary of the United States to represent to the British government the signal aggression which had been committed on their sovereignty and their flag, and to require the satisfaction due for it; indulging the expectation, that his Britannic majesty would at once perceive it to be the truest magnanimity, as well as the strictest justice, to offer that prompt and full expiation of an acknowledged wrong, which would re-establish and improve both in fact and in feeling the state of things which it had violated.

This expectation was considered as not only honorable to the sentiments of his majesty, but was supported by known examples, in which, being the complaining party, he had required and obtained, as a preliminary to any counter complaints whatever, a precise replacement of things, in every practicable circumstance, in their pre-existing situation.

Thus in the year 1764, Bermudians and other British subjects, who had according to annual custom, taken possession of Turk's island for the season of making salt, having been forcibly removed with their vessels and effects by a French detachment from the island of St. Domingo, to which Turk's island was alleged to be an appurtenance, the British ambassador at Paris, in pursuance of instructions from his government, demanded, as a satisfaction for the violence committed, that the proceedings should be disavowed, the intention of acquiring Turk's island disclaimed, orders given for the immediate abandonment of it on the part of the French, every thing restored to the condition in which it was at the time of the aggression, and reparation made of the damages which any British subjects should be found to have sustained, according to an estimation to be settled between the governors of St. Domingo and Jamaica. A compliance with the whole of this demand was the result.

Again:—In the year 1789, certain English merchants having opened a trade at Nootka sound, on the north west coast of America, and attempted a settlement at that place, the Spaniards, who had long claimed that part of the world as their exclusive property, dispatched a frigate from Mexico, which captured the two English vessels engaged in the trade, and broke up the settlement on the coast. The Spanish government was the first to complain, in this case, of the intrusions committed by the British merchants. The British government, however, demanded that the vessels taken by the Spanish frigate should be restored, and adequate satisfaction granted, *previous to any other discussion.*

This demand prevailed; the Spanish government agreeing to make full restoration of the captured vessels, and to indemnify the parties interested in them for the losses sustained. They restored also the buildings and tracts of land, of which the British subjects had been dispossessed. The British, however, soon gave a proof of the little value they set on the possession, by a voluntary dereliction, under which it has since remained.

The case which will be noted last, though of a date prior to the case of Nootka Sound, is that of Falkland's Islands. These islands lie about one hundred leagues eastward of the streights of Magellan. The title to them had been a subject of controversy among several of the maritime nations of Europe. From the position of the islands and other circumstances, the pretension of Spain bore an advantageous comparison with those of her competitors. In the year 1770, the British took possession of Port Egmont in one of the islands, the Spaniards being at the time in possession of another part, and protesting against a settlement by the British. The protest being without effect, ships and troops were sent from Buenos Ayres by the governor of that place, which forcibly dispossessed and drove off the British settlers.

The British government looking entirely to the dispossession by force, demanded as a specific condition of preserving harmony between the two courts, not only the disavowal of the Spanish proceedings, but that the affairs of that settlement should be immediately restored to the precise state in which they were previous to the act of dispossession. The Spanish government made some difficulties; requiring particularly a disavowal, on the part of G. Britain, of the conduct of her officer at Falkland's islands, which, it was alledged, gave occasion to the steps taken by the Spanish governor; and proposing an adjustment by mutual stipulation in the ordinary form.

The reply was, that the moderation of his Britannic majesty having limited his demand to the smallest reparation he could accept for the injury done, nothing was left for discussion but the mode of carrying the disavowal and restitution into execution; *reparation losing its value if it be conditional,* and to be obtained by any stipulation whatever from the party injured.

The Spanish government yielded. The violent proceedings of its officers were disavowed. The fort, the port, and every thing else were agreed to be immediately restored to the precise situation which had been disturbed; and duplicates of orders issued for the purpose to the Spanish officers, were delivered into the hands of one of the British principal secretaries of state. Here again it is to be remarked, that satisfaction having been made for the forcible dispossession, the islands lost their importance in the eyes of the British government, were in a short time evacuated, and port Egmont remains with every other part of them in the hands of Spain.

Could stronger pledges have been given than are here found, that an honorable and instant reparation would be made in a case, differing no otherwise from those recited, than as it furnished to the same monarch of a great nation, an opportunity to prove, that adhering always to the same immutable principle, he was as ready to do right to others, as to require it for himself?

Returning to the instructions given to the minister plenipotentiary of the U. States at London, I am to observe that the President thought it just and expedient to insert as a necessary ingredient in the adjustment of the outrage committed on the American frigate, a security against the future practice of the British naval commanders, in impress-

(*Continued on last page.*)