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(CIRCULAR.)
TREASURY DEPARTMENT,
August 9th, 1809.

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of a proclamation of the president of the United States, announcing that certain British orders in council were not withdrawn on the 10th day of June last, and consequently that the trade renewable, on the event of the said orders being withdrawn, is to be considered as under the operation of the several acts by which such trade was suspended.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 prohibit the commercial intercourse between the U. States and Great Britain and France & their dependencies, and for other purposes," passed on the 28th day of June, 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 hereafter expressed refuse clearances for British ports, requiring as usual bonds from all vessels bound to permitted ports in the manner provided by the 3d section of the act above mentioned. 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 U. 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 above mentioned act or of the non-intercourse act of the 18th March last, arising from acts which would, in conformity with his proclamation of the 19th 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 failed

for the U. 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 U. States from British ports or with British merchandise.

3. All vessels now owned by citizens of the U. 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 above mentioned cases of vessels arriving in the U. States, & 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 instructions herein given to abstain from prosecutions and seizures in the above mentioned cases, being only intended to prevent the expences and inconveniences to which the parties concerned would otherwise be exposed.

I am, respectfully,

Sir,

Your obedient servant,

ALBERT CALATIN.

The Collector of —

Whether the engagement made by Mr. Erskine with our government be in any, or what degree binding on the British government has occasioned much discussion. The solution of this point certainly depends on the powers vested in Mr. Erskine. If those powers were such as Mr. Erskine most unequivocally alledged them to be, the agreement would have been absolutely binding in all its parts. In his correspondence with Mr. Smith, he declares every step taken to have been in consequence of full power from the King of England; power, not to form the articles of an ordinary treaty, subject to the confirmation or rejection of each sovereign that was a party to it; but an agreement absolute, unconditional, final, and to take effect in both countries at the same time, and particularly in the U. States before any measures taken by England should be known here. On this point the writers on the laws of nations use a language altogether unambiguous—Vattel says—

"Sovereigns treat with each other by their plenipotentiaries, who are invested with sufficient power, and who are commonly called plenipotentiaries. We here apply all the rules of the law of nature, to things that are done

by commission. The rights of the proxy are expressed in the instructions that are given him; but every thing he promises within the terms of his commission and the extent of his powers, bind his constituents."

Again—

"But to refuse with honor to ratify what has been concluded on, by virtue of a full power, it is necessary that the sovereign should have strong and solid reasons, and that he shew in particular that his minister had deviated from his instructions."

Marteus says—

"The treaty must have been contracted in the name and by the authority of the sovereign power. Any thing that has been promised by the chief, or his agent, beyond the limits of the authority with which the state has entrusted him, is at most, no more than a simple promise (sponsio) which only obliges the person who promises, to use his endeavors to procure its ratification, without binding the state, which of course, may refuse its ratification. On the contrary every thing that has been stipulated by an agent in conformity to his full powers ought to become obligatory for the state, from the moment of signing, without even waiting for the ratification. However, not to expose a state to the errors of a single person, it is now become a general maxim, that public conventions (but not simple military arrangements in time of war) do not become obligatory till ratified. The motive of this custom clearly proves that the ratification can never be refused with justice, except when he who is charged with the negotiations, keeping within bounds with respect to his public full powers, has gone beyond his secret instructions, and consequently has rendered himself liable to punishment."

The binding force then of the agreement on Great Britain must depend on the instructions given to Mr. Erskine. If those instructions did not authorize the course pursued by him, it instantly became the duty of the British government to do every thing in its power to prove that no such authority was given 'to shew in particular,' in the language of Vattel, 'that its minister had deviated from his instructions.' Has this been done? A solitary dispatch of old date has been published. Other instructions are referred to on its face. Various letters must have passed between Mr. Erskine and his government. These documents essential to a clear understanding of the subject, and to the shewing to the satisfaction of our government, that Mr. Erskine really deviated from his instructions, are all suppressed. We repeat the question, why are they withheld, but, because if published they would give the affair a different complexion from that attempted to be stamped up on it by the note of the 23d of January?—Under circumstances so extraordinary as those involved in the agreement a government, anxious to avoid imputations unfavorable to its reputation, would not have hesitated to make a frank and full disclosure of every thing. The objection to this arising from a pending negotiation is altogether lame, as the injury from such a disclosure would be infinitely less than the continuance of the obscurity. Besides, if a negotiation be still pending, what serious inconvenience could be suffered by England by such a disclosure? It could only expose the terms which she was disposed to come to under particular circumstances. If those circumstances are altered, the obligation to comply with them no longer exists, and if

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