

wish to extenuate, but I have not been able to discover it. If it is in the letter it is a mite too small for my vision.

The next letter in course is that of Mr. Smith of the 19th of October, in which Mr. Jackson is reminded that the President expected "a formal and satisfactory explanation" of the reasons of the disavowal, and he is told that the President "persists in that expectation and in the opinion that there has been given no explanation that is adequate either as to the matter or the mode." In a subsequent part of the letter the Secretary goes on to say—"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." And why did it excite so much surprise in Mr. Smith? Was it that he now, for the first time, had information of the offensive conditions, or that the alleged substitution was considered by him as an imputation on his honesty or that of the government? Let him give the answer. "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." No, sir, the conditions were not merely shown by Mr. Erskine, but they were pressed by him, and very properly rejected by the Secretary, and other terms finally adopted: And whether you call the proposal a substitution or by some other name, it was the natural course to be taken.

Mr. Smith then proceeds to say—"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 instruction; 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 inadmissible in case the more desirable should not be attainable. This is not obvious to every understanding, and it is confirmed by universal experience.

What were the real and entire instructions given to your predecessor in 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 the 15th 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 & of the 14th 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 authorized to make an arrangement, the arrangement would not have been made."

I must beg you, sir, here to recollect that when Mr. Smith wrote this letter he had seen the instructions of the 23d of January which, tho' they may be deemed offensive, are precise and clear, and that Mr. Jackson had not only solemnly pledged himself that Mr. Erskine had no other instructions, but had placed the right of disavowal on this very circumstance. Now in what I have just read to you I perceive a direct charge of falsehood on Mr. Smith to Mr. Jackson, such as the Secretary not only in that Mr. Erskine had several instructions or different grades of propositions in the same instructions, but that he had attempted to make out the Mr. Erskine's assurance a deception. In doing this he insinuates that the British government has been guilty of perfidy in refusing to effect the arrangement, and that the British government has been guilty of that government. For

you will recollect that by the letter of Mr. Pinkney of the 28th of May, it appears that Mr. Canning declared to him that Mr. Erskine had acted "not only without authority but in direct opposition to the most precise instructions," and the order of council of the 24th of May, declares that the agreement "is not such as was authorized by his majesty's instructions."

I am not about to question the propriety of this measure. It is perhaps right, and it might have been necessary, if the Executive had this impression, to avow it; but it does appear to me that if Mr. Smith desisted this course of correspondence proper & justifiable on his part, he should not have been so ready to take fire at an insinuation not more gross. Let me say too that not perceiving the necessity or utility in the then existing state of things of the remarks, I do most sincerely regret they were made. Their tendency is certainly not to bring to a happy termination our disputes with G. Britain.

We will now, sir, pass to the reply of Mr. Jackson of the 23d of October. In answer to the renewed call for an explanation of the disavowal, he says: "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 inst. 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 reference to the terms of your agreement."

Here again it is said, this evil spirit of insinuation has embodied itself, and it has been discovered lurking in the latter sentence in which Mr. Jackson states that the instructions of Mr. Erskine, which with a reference to his former letter, and what follows in this, is declared by the British minister to rest in the despatch of the 23d of Jan. were known in substance by Mr. Smith at the time of the arrangement, as he understood not only from the admission of Mr. Smith, but from the deduction in the letter of the 11th of Oct. Now what is the deduction? By adverting to that letter it will be discovered to rest on the "official correspondence" of Mr. Erskine to his government. And what are the facts? Mr. Smith in his letter of the 19th of October very fairly admits that the "three conditions" were presented and pressed by Mr. Erskine. But does Mr. Jackson allege in this or any other letter, that when Mr. Erskine gave in the "three conditions" he intimated that he was not authorized to treat on other terms, or that our government so knew? I can perceive nothing of this. Indeed it would have been much more fair for the Executive to have drawn a contrary admission from this sentence. For if the "three conditions" were distinctly known, and the British minister would consent, as he did consent, to adopt terms which did not comport with them, the fair inference is that he must have led our government to believe that his instructions had "two or more grades of propositions." Why then did the Executive persist in the notion that the mere recital of things known to be true bore with it an insinuation of another fact which is not true.

Permit me now, sir, to read that part of Mr. Jackson's letter which is in answer to the insinuation of double instructions.

"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 authorized 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 unauthorized agreement concluded here, inasmuch as in point of fact Mr. Erskine had to such graduated instruction. You are already acquainted with that which was given, & 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."

Here Mr. Jackson meets the insinuation, not by talking of the respect due to his government, but by an open and unequivocal denial. "Mr. Erskine had no such graduated instruction." You, sir, he says to Mr. Smith, have never seen the despatch of the 23d January, and although you might have been induced to think that Mr. Erskine had father powers, I have

informed you, and again repeat, that this is not so. Does not this renewed asseveration afford a strong ground for the belief that Mr. Jackson never had in mind the insinuation with which he is charged. One word, sir, as to what is stated about the substitution. In this as well as in the former letter, it appears to me that the remark that Mr. Erskine had stated that the terms finally agreed on were substituted in lieu of those originally proposed is made for the very obvious purpose of shewing that in Mr. Erskine's own conception the agreement did not comport with the "three conditions."

In the course of the correspondence the next letter is that of Mr. Smith of the 1st of November, from which I will read a few passages. In answer to the explanation he says—"Altho' 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."

While the disavowal was a matter of discussion, it might be proper to canvass the reasons on which it was attempted to be justified. But after the explanation had been given and recognized by our government, it was not strictly necessary to intimate as is here done, that the British minister had behaved unbecomingly in delaying that explanation, or in evincing a reluctance to give it at all. Besides, sir, as the first letter of Mr. Smith is dated the 9th of October, and the letter of Mr. Jackson is of the 23d of the same month, there was really no great delay, and as to any reluctance, I find in Mr. Jackson's first letter of the 11th of Oct. the same causes assigned for the disavowal as in that of the 23d, with perhaps less force.

The letter of Mr. Smith closes thus:—

"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 authorize 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."

Shall I say, sir, that in this part of the letter the Secretary shews such a want of temper, the expressions used by him are so harsh, that as an American, I have to regret that he ever suffered the paper to pass the threshold of his office. I admire firmness, and when the occasion demands it our public functionaries ought to use the language of complaint and expostulation, nay, even that of crimination, but then it ought to be done in terms which are decorous. To tell a minister in terms that he has made "several irrelevant and improper allusions in his letter," without specifying wherein, is not using the language even of dignified resentment. And while a negotiation is pending, the adoption of such language must irritate, and however intended, can have the effect only, of bringing it to a disastrous close.

I am now come to Mr. Jackson's last letter, and you will here permit me to repeat, that I feel no inclination to justify the manner in which the correspondence was conducted on his part. The close of this letter in particular is so uncourteous, that but for the letter of Mr. Smith, to which it is in answer, I should call it rude. The charges however made against the British minister, of conduct unbecoming and improper, in the plainest terms, and without coloring or qualification, invited a reply out of the ordinary course of diplomatic civility.

Mr. Jackson in his letter of the 4th of November, thus expresses himself:

"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 no 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 epi-

thets 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 least 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."

Now, what are the insinuation, which Mr. Jackson "had uttered" and the facts he had stated? I find it nowhere said that he had uttered the insinuation complained of, the charge on the contrary is that he has used a language which by implication is said to convey the idea so offensive to our government. And what, sir, is this language? I have already given it to you in detail, and will only here remark generally, that I see nothing in it but an adherence to two facts, that the despatch of the 23d of January, was the only authority which Mr. Erskine had to conclude an arrangement, and that the "three conditions" forming the substance of that despatch, were known to our government. Permit me to remark that if the insinuation is not contained in the former letters, it certainly is not in this.

But it is said that inasmuch as Mr. Smith had charged Mr. Jackson with the insinuation, and as Mr. Jackson makes no denial, but declares that he should not think of uttering an insinuation where he was not able to substantiate a fact it is an admission of the charge. If we strip the sentence of its severity and rudeness we will perceive that Mr. Jackson, never having uttered the insinuation in terms, must have understood that Mr. Smith perceived it in the statement of the two facts, and as he knew this statement to be correct, he meant to adhere to it, notwithstanding Mr. Smith might draw an inference which did not inevitably flow from it. At best this sentence is equivocal, and our Executive might have understood Mr. Jackson as saying I did not think of making the insinuation of which you complain, because I am not able to substantiate the fact.

Will any gentleman still say that Mr. Jackson ought explicitly to have renounced his error, to have acknowledged that he did mean the insinuation, and that it was without foundation? If he does so say, he must have forgot the course and temper of this correspondence. Certainly there was nothing in Mr. Smith's last letter, which could possibly lead to conciliation or concession. When equals meet we must expect that harshness will meet harshness, and when one party will permit himself to be uncivil, he must expect incivility, not courtesy or concession from the other.

I have now done with the correspondence as it relates to the insult. And, sir, lest I may be misunderstood, I will now state, that it is not my intention to intimate that our government knew that Mr. Erskine made the arrangement without authority. My aim has been to shew that Mr. Jackson did not use "a language implying a knowledge in this government, that the instructions of his predecessor did not authorize the arrangement formed by him." To myself the considerations I have urged are satisfactory.

I will now proceed, sir, (said Mr. Emott) to consider whether the Executive in refusing to receive any further communications from the British minister, has manifested a just regard to the interest of the American people. I have already remarked, that in my opinion the true interest of the country was not consulted in or promoted by this measure; it remains then for me to explain the grounds of that opinion.

It would be superfluous in me at this time to attempt to prove that the interest of this country is best promoted by a state of peace and of free intercourse with Great Britain. The mutual wants of the two nations might be brought to prove this, but the general joy of the country so audibly expressed at the time it was thought our restrictive system as to that nation was about to be abandoned, is sufficient for my purpose, as it shews as

well the general wish as the general sense of the community on this subject. If then it is the interest and the wish of the nation to be at peace with Great Britain, it ought to be a primary point in the policy of our administration to form a treaty with that country on just principles. Matters of etiquette and personal considerations ought to give way to this greater object. I cannot therefore think that the interest of the country was promoted by a refusal in the course of a few days, to communicate with the man who came (ostensibly at least) to form a treaty with us.

It has been remarked, however, that Mr. Jackson had no power to treat, and that therefore any further communication with him could answer no desirable purpose. I will not ask your attention to all that passed between Mr. Smith and Mr. Jackson on this point, but will merely present to you the call which Mr. Smith made for the authority and the answer which Mr. Jackson gave.

Mr. Smith in his letter of the 1st of November says—

"For the first time it is now disclosed that the subjects, arranged with this government by your predecessor, are held not to be within the authority of a Minister Plenipotentiary, and that, not having had a 'full power' issued 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 our own discretion."

To this call Mr. Jackson in his letter of the 4th of November answers—

"I 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 negotiation."

It is not necessary for me after the very able and satisfactory explanation which has been given by my friend from Connecticut, (Mr. Dana) of what is intended by "a full power" in diplomacy to shew the authority it creates. Suffice it to say, that if Mr. Jackson had such authorization he might have concluded a treaty, & that he had, I am satisfied. He not only declared that in addition to his letter of credence he had a full power under the great seal of England, but offered to produce it. Would such offer have been made if the thing had no existence. If the executive entertained a suspicion of this kind why did he not take Mr. Jackson at his word. Instead of doing this, the answer of Mr. Smith is a dismissal of the negotiation with the negotiator.

But if Mr. Jackson was impowered to treat, it is suggested that it was on terms derogatory to the honor and inconsistent with the interest of the country, inasmuch as his instructions bound him to insist on the "three conditions" as the basis of his negotiation. One of these conditions you will recollect is the absolute relinquishment of the colonial trade as well indirect as direct, and another is the authorization of the British Navy to enforce our non-intercourse system.

Now on these terms I never would conclude a treaty with Great Britain. Nay I can hardly forgive our secretary for his official assurance to Mr. Erskine, as I find it in the letter of that Gentleman to Mr. Smith of the 9th of August—"The third condition you