Mr. Madison, Secretary of State, to Messrs. Monroe and Pinkney, Ministers Extraordinary and Plenipotentiary of the United States, in London.

Department of State,
May 17, 1806.

Gentlemen,

I herewith inclose a commission and letters of credence, authorizing you to treat with the British government concerning the maritime wrongs which have been committed, and the regulation of commerce and navigation between the parties. Your authority is made several as well as joint, as a provision for any contingency depriving either of the co-operation of the other.

The importance of the trust is evinced by its being made the occasion of an extraordinary mission, as well as by the subjects which it embraces. And I have great pleasure in expressing the confidence which the President feels, in the prudence and talents to which the business is committed.

It is his particular wish that the British government should be made fully to understand, that the United States are sincerely and anxiously disposed to cherish good will and liberal intercourse between the two nations; that an unwillingness alone to take measures not congenial with that disposition, has made them so long patient under violations of their rights and of the rules of a friendly reciprocity; and when forced at length by accumulating wrongs to depart from an absolute forbearance, they have not only selected a mode strictly pacific, but in demonstration of their friendly policy, have connected with the measure an extraordinary mission, with powers to remove every source of difference, and even to enlarge the foundations of future harmony and mutual interest.

There can be the less ground of umbrage to the British government, in the act prohibiting the importation of certain articles of British manufacture—1st, Because there is nothing on the face of the act beyond a mere commercial regulation, tending to foster manufactures in the United States, to lessen our dependence on a single nation by the distribution of our trade, and to substitute for woollens and linens, manufactures made from one of our principal agricultural staples. 2d—Because it is far short of a reciprocity with British exclusions of American articles of export. 3d—Because as a commercial measure, discriminating in the time of war, between British and other nations, it has examples in British practice. It deserves attention also, that a discrimination was made, and under another name still exists, in the amount of convoy duty imposed on the trade between Great Britain with Europe, and with America. 4th—Because the measure cannot be ascribed to a partiality towards the enemies of Great-Britain, or to a view of favoring them in the war, having for its sole object the interest of the United States, which it pursues in a mode strictly conformable to the rights and the practice of all nations.

In fine the act may truly be represented as so far from derogating from the amicable dispositions of the United States towards Great Britain, that it has resulted solely from the inefficacy of their protracted and reiterated endeavors, otherwise to obtain a just redress, and from a hope that an appeal in this peaceable form to the reflections and interests of an enlightened nation, would be more successful in removing every obstacle to a perfect and permanent cordiality between the two nations.

The instructions given to Mr. Monroe, January 5, 1804, having taken into view, and being still applicable to a great proportion of the matter now committed to your joint negotiations, it will be most convenient to refer you to those instructions as your general guide, and to confine the present to the alterations and additions, which a change of circumstances, or a contemplation of new objects, may require.

The first article of the project comprised in the instructions of 1804, relates to the impressment of seamen. The importance of an effectual remedy for this practice, derives urgency form the licentiousness with which it is still pursued, and from the growing impatience of this country under it. So indispensable is some adequate provision for the case, that the President makes it a necessary preliminary to any stipulation, requiring a repeal of the act shutting the market of the United States against certain British manufactures. At the same time he authorises you, in case the ultimatum as stated in the article above referred to, should not be acceptable to the British government, to substitute one in the terms following; "No seaman nor seafaring person shall upon the high seas, and without the jurisdiction of either party, be demanded, or taken out of any ship or vessel, belonging to the citizens or subjects of one of the parties, by the public or private armed ships or men of war belonging to, or in the service of the other party, and strict orders shall be given for the due observance of this engagement."

An article in these terms was with the acquiescence of Lord Hawkesbury and Mr. Addington, concerted between Mr. King and Lord St. Vincent, on the approaching renewal of the late war. It was frustrated by an exception of the "narrow seas," inserted by Lord St. Vincent, an exception so evidently inadmissible both in principle and in practice, that it must have been intended as a pretext for evading the stipulation at that time. Perhaps the present ministry may neither be disposed to resort to such a pretext; nor unwilling to avail themselves of the precise sanction as far as it was given, by their predecessors.

With respect to contraband, which is the subject of the 4th article, it may be observed, that as it excludes naval stores from the list, and is otherwise limited to articles strictly military, it must if admissible to Great Britain, leave but feeble objections to an abolition of contraband altogether. In the present state of the arts in Europe, with the intercourse by land, no nation at war with Great Britain can be much embarrassed by leaving those particular articles subject to maritime captures. Whilst belligerent nations, therefore, have little interest in the limited right against contraband; it imposes on neutrals all the evils resulting from suspicious and vexatious searches, and from questions incident to the terms used in the actual enumeration. It is not an unreasonable hope, therefore, that in place of this article, an entire abolition of contraband may be substituted. Should this be found unattainable, it may be an improvement of the article as it stands, to subjoin, for the sake of greater caution, to the positive enumeration, a negative specification of certain articles, such as provisions, money, naval stores, &c. as in no case to be deemed within the meaning of the article; with a proviso, that the specification shall not be construed to imply in the least, that any articles not specified in the exception, shall, on that account, be liable to be drawn into question.

A doctrine has been lately introduced by the British courts, and at length adopted by the instructions of June, 1803, to British cruizers, which regards contraband conveyed in one voyage as affecting a resumed or return voyage, although the contraband shall have been previously deposited at its port of destination. It will be a further improvement of the article to insert a declaratory clause against this innovation, and the abuses incident to it.

The 4th article, besides the stipulation on the subject of contraband, relates to two other subjects. 1st—That of free ships, free goods. 2d—That of a trade with enemy's colonies.

1st. With respect to the first, the principle that a neutral flag covers the property of an enemy, is relinquished in pursuance of the example of the Russian treaty on which the article is modelled; the relinquishment however being connected with, and conditioned on, the provision required in favor of the neutral right to the colonial trade. The importance of that principle to the security of neutral commerce, and to the freedom of the seas, has at all times been felt by the United States; and although they have not asserted it as the established law of nations, they have ever been anxious to see it made a part of that law. It was with reluctance, of course, that a contrary stipulation was authorised, and merely as a mean of obtaining from Great Britain, the recognition of a principle now become of more importance to neutral nations possessing mercantile capital, than the principle of "free ships, free goods." It is to be particularly kept in view, therefore, that such a contrary stipulation is to be avoided if possible, and if unavoidable that the stipulation be so modified as to interfere as little as possible, with the spirit and policy of any provisions in favor of the principle which may be likely to be introduced into a treaty of peace among the present belligerent powers of Europe.—Should it be known that Russia as well as France mean to insist on such a provision; and that such a stipulation by the United States, however modified, will materially affect her confidence and good will towards them, the objection to the measure will acquire a force that can yield only to the consideration, that without such a sacrifice the provisions for the security of our seamen, and of our neutral commerce cannot be obtained, and that the sacrifice will effectually answer those purposes.

2d. The vast importance of the colonial trade, with the circumstances and the excitement which have taken place since the date of the original instructions to Mr. Monroe, will require that the neutral right on this subject, be provided for in an appropriate article, and in terms more explicit than are used in the article under review. As the right in this case turns on the general principle that neutrals may lawfully trade, with the exceptions of blockades and contraband, to and between all ports of an enemy, and in all articles, although the trade shall not have been open to them in time of peace; particular care is to be taken, that no part of the principle be expressly or virtually abandoned, as being no part of the law of nations. On the contrary, it is much to be desired, that the general principle in its full extent, be laid down in the stipulation. But as this may not be attainable, and as too much ought not to be risked by an inflexible pursuit of abstract right, especially against the example and the sentiments of great powers having concurrent interests with the U. States, you are left at liberty, if found necessary, to abridge the right in practice, as is done in the supplement of October 1801, to the treaty of June of that year, between Russia and G. Britain; not omitting to provide that in case Great Britain should by her treaties or instructions leave to any other nation the right in a greater extent than is stipulated to the U. States, they may claim the enjoyment of it in an equal extent.

The abuses which have been committed by G. Britain, under the pretext that a neutral trade, from enemy colonies, through neutral ports, was a direct trade, render it indispensable to guard against such a pretext, by some express declaration on that point. The most that can be conceded, on the part of the U. States is, that the landing of the goods, the securing the duties, and the change of the ship, or preferably the landing of the goods alone or with the securing the duties, shall be requisite to destroy the identity of the voyage & the directness of the trade, and that the ordinary documents of the custom house officers, shall be sufficient evidence of the facts or fact.

A satisfactory provision on this subject of a trade with the enemy colonies, is deemed of so much consequence to the rights and interests of the U. S. and is so well understood to have been contemplated along with a like provision against the impressment of seamen, in the late act of Congress prohibiting the importation of certain classes of British manufactures, that, as was enjoined with respect to the provision against impressment no stipulation is to be entered into, not consistent with a continuance of that act, unless the provision with respect to the colonial trade be also obtained.

In remodelling the provision with respect to the colonial trade, you may with great propriety urge a distinction between the West India colonies, and the very distant ones in the East Indies and elsewhere, and the reasonableness of limiting to the former the exception of the direct trade with their parent countries out of the general neutral right. The distinction is supported by several considerations, particularly by the greater difficulty, in the case of the more distant colonies, of previously knowing, & eventually proving, the regulations as they may have actually stood in time of peace; and by the ruinous delays and expences attending the judicial investigations. The British courts have in fact admitted the distinction so far as to presume the lawfulness of the neutral trade with the East India colonies, as being generally open in peace as well as war; whilst they reverse the presumption, with respect to the West Indies.

In addition to what is proposed on the subject of blockades in VI and VII articles, the preseverance of Great Britain in considering a notification of a blockade, and even of an intended blockade, to a foreign government, or its ministers at London, as a notice to its citizens, and as rendering a vessel wherever found in a destination to the notified port, as liable to capture, call for a special remedy. The palpable injustice of the practice, is aggravated by the auxiliary rule prevailing in the British courts, that the blockade is to be held in legal force, until the governmental notification be expressly rescinded; however certain the fact may be that the blockade was never formed or had ceased. You will be at no loss for topics to enforce the inconsistency of these innovations with the law of nations, with the nature of blockade, with the safety of neutral commerce & particularly with the communication made to this government by order of the British government, in the year 1804; according to which, the British commander and vice-admiralty courts, were instructed "not to consider any blockade of the islands of Martinique and Guadaloupe as existing, unless in respect of particular ports which may be actually invested, and then not to capture vessels bound to to such ports, unless they shall previously have been warned not to enter them."

The absurdity of substituting such diplomatic notifications in place of a special warning from the blockading ships, cannot be better illustrated than by the fact, that before the notification of a proposed blockade of Cadiz, in the year 1805, was received here from our minister at London, official information was was received from Cadiz, that the blockade had actually been raised by an enemy's fleet.

It may be worth your attention, that a distinction has been admitted by the British prize court, in consideration of the distance of the United States from the European blockades, between their citizens and those of states, less distant; the notice required for the former being more positive than is made necessary for the latter. You will be able to avail yourselves in the discussion, and perhaps in the modification of the article, of the reasons on which such a distinction rests.

[*Confidential—not printed*]

There remains as an object of great importance, some adequate provision against the insults and injuries committed by British cruizers, in the vicinity of our shores and harbors. These have been heretofore a topic of remonstrance, and have in a late instance been repeated with circumstances peculiarly provoking, as they include the murder of an American seaman within the jurisdictional limits of the United States. Mr. Monroe is in full possession of the documents explaining a former instance. Herewith will be received those relating to the late one. They not only support a just demand of an exemplary punishment of the offenders, and of indemnity for the spoliations, but call for some stipulations, guarding against such outrages in future. With this view it is proper that all armed belligerents ships should be expressly and effectually restrained from making seizures, or searches, within a certain distance from our coasts, or taking stations near our harbors, commodious for those purposes.

In defining the distance proterted against belligerent proceedings, it would, not perhaps be unreasonable, considering the extent of the United States, the shoalness of their coast, and the natural indication furnished by the well defined path of the Gulph stream, to expect an immunity for the space between that limit, and the American shore. But at least it may be insisted that the extent of the neutral immunity should corresponding with the claims maintained by Great Britain, around her own territory. Without any particular enquiry into the extent of these it may be observed, 1st. That the British act of parliament, in the year 1736, 9 G. 2. c. 35, supposed to be that called the Hovering act, assumes for certain purposes of trade, the distance of four leagues from the shores. 2d. That it appears that both in the reign of James I. and of Charles II.* the security of the commerce with British ports was provided for, by express prohibitions against the roving or hovering of belligerent ships so near the neutral harbors and coasts of Great Britain, as to disturb or threaten vessels homeward or outward bound; as well as against belligerent proceedings generally, within an inconvenient approach towards British territory.

With this example, and with a view to what is suggested by our own experience, it may be expected that the British government will not refuse to concur in an article to the following effect.

"It is agreed that all armed vessels belonging to either of the parties engaged in war, shall be effectually restrained by positive orders and penal provisions, from seizing, searching, or otherwise interrupting or disturbing vessels to whomsoever belonging, and whether outward or inward bound, within the harbors, or the chambers formed by headlands, or any where at sea within the distance of four leagues from the shore, or from a right line from one headland to another: It is further agreed, That, by like order and provisions, all armed vessels shall be effectually restrained by the party to which they respectively belong, from stationing themselves, or from roving or hovering so near the entry of any of the harbors or coasts of the other, as that merchantmen shall apprehend their passage to be unsafe, or a danger of being set upon and surprised; and that in all cases where death shall be occasioned by any proceeding contrary to these stipulations, and the offender cannot conviently be brought to trial and punishment under the laws of the party offended, he shall on demand made within months be delivere up for that purpose."

* *See L. Jenkins, Vol. 1. and Vol. 2.*

If the distance of four leagues cannot be obtained, any distance not less than one sea league may be substituted in the article. It will occur to you, that the stipulation against the roving and hovering of armed ships on our coasts, so as to endanger or alarm trading vessels, will acquire importance, as the space entitled to immunity shall be narrowed.

Another object, not comprehended in the instructions of 1804, to Mr. Monroe, is rendered important, by the number of illegal captures and injuries, which have been committed by British cruizers since that date. An indemnity for them, is due on every consideration of justice and friendship, and is enforced by the example heretofore given by G. Britain herself, as well as by other nations which have provided by treaty, for repairing the spoliations practised under color of their authority. You will press this as an object too reasonable not to be confidently expected by the United States. Many of the claims, indeed, for indemnification are so obviously just, that a refusal to satisfy them, cannot be decently made, and ought not therefore to be presumed.

The two modes most readily presenting themselves for a comprehensive provision for the claims, are, first, the establishment of a board, analogous to that provided for in the 7th article of the treaty of 1794; secondly, the substitution of a gross sum to be distributed among the claimants, according to a liquidation to be made under the authority of the U. States.

The second is the mode most eligible, if the gross sum to be allowed be thought to approach the amount of losses to be indemnified. To assist you in estimating these, the statements addressed to this department by the underwriters, and others, are herewith transmitted. These statements, with those furnished by Mr. Lyman, to November 1st, will be to be reduced, according to the redress which shall have been judicially afforded, and on the other hand to be augmented by the addition of cases not reported here, and to be collected from the sources of information within your own reach.

If the first mode should be adopted, great care will be requisite, in describing the cases, to employ such general terms as will comprehend all that are fairly entitled to redress. It will be well at the same time to secure, by specifying such of the cases as can be specified, and as are least susceptible of objection. Under this head may be classed, 1st, cases in which the official communication made by lord Hawkesbury to Mr. King, of the 11th day of April, 1801, has been violated; 2d, cases in which the rules of blockade, stated in Mr. Merry's communication to the department of state, on the 12th day of April, 1804, have been violated; 3d, cases where the territorial jurisdiction of the U. States has been violated.

The list of neutral rights, asserted in the report of the secretary of state to the President, on the 25th day of January, 1806, will suggest other specifications which may be attempted. It may be worth recollecting, that the British order of council, bearing date 24th June, 1803, and subjecting to capture vessels on a return voyage, which had carried contraband in the outward voyage, was never promulged, nor was it known that such a rule was to be enforced, until the summer of 1805. Could the rule be regarded otherwise than as it certainly is, an innovation on the law of nations, all captures before it was made known, and contrary to antecedent practice, would be marked by an unjust surprize, fairly entitling them to redress.

The business to come before such a board may be much diminished by the reference of cases, particularly of costs and damages, and such others whose description by common consent entitles them to redress, to the king's advocate and an advocate to be named on your part, who may be authorised to report the sums due, subject to the approbation, in each case, of Mr. Lyman, our agent. As far as the cases fall within the observation here made, a liquidation of them may be carried on during the period of negociation.

Although the subject of indemnifications for past wrongs is to be pressed as of great magnitude, in a satisfactory adjustment of our differences with G. Britain; yet as the British government may be inflexible in refusing an arrangement implying that her maritime principles of capture were contrary to the law of nations,