General Advertiser

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Documents,

TRANSMITTED TO BOTH HOUSES OF CONGRESS, WITH THE MESSAGE OF THE PRESIDENT, OF 7th DEC. 1819. [*Continued*]

No. 2.

General instructions to Mr. Forsyth, Minister Plenipotentiary to Spain.

Department of State,
Washington, 8th March, 1819.

John Forsyth:

Sir: The treaty of amity, settlement, and limits, between the United States and Spain, concluded on the 22d ultimo, and ratified on the part of the United States, having provided for the adjustment of all important subjects of difference between the two nations, the first object of your mission will be to obtain the ratification of the Spanish government, and receive it in exchange for ours, the authentic instrument of which is committed to your charge. The United States' ship Hornet, captain Read, is in readiness at Boston, and orders have been despatched under which you will take passage in her for Cadiz. It is desirable that you should embark without delay. On your arrival in Spain, the Hornet will remain at Cadiz, subject to your orders, until the exchange of the ratifications can be effected. And if, as is anticipated, no obstacle should intervene to delay that transaction, you will, upon receiving the Spanish ratified copy, immediately forward it to captain Read, with directions to bring it immediately to the United States. As the ulterior destination of the Hornet will be the Gulph of Mexico, the port to which it will be advisable for him to come, will be New York.

On exchanging the ratifications, certificates of the fact will be mutually executed and delivered by you and the Spanish Minister with whom you will make the exchange. Copies of that which passed, in both languages, on the exchange of the ratifications of the convention of the 11th August, 1802, are now furnished you, and will serve as forms, to be used in the performance of this ceremony. On this occasion, as upon all others upon which you may have occasion to execute any documents, joint or reciprocal, with a foreign Minister of State, you will be careful to preserve the right of the United States to the *alternative* of being first named, and your own right, as their representative, to sign first in the papers executed; while, in the counterparts, the other contracting party will be named first, and the foreign Minister will first sign and seal. A rigid adherence to this practice has become necessary, because it is strictly adhered to by all the European sovereigns, in their compacts with one another; and, because the United States having heretofore sometimes forborne to claim this conventional indication of equal dignity, some appearance of a disposition to allege the precedent against them, as affecting their right to it, was manifested by the British plenipotentiaries, on executing the convention of 3d July, 1815, and by Mr de Onis, at the drawing up and signing of this treaty. The scruple was, however, in both cases abandoned, and the right of the United States to the alternative was conceded. It is not expected that it will hereafter be questioned, and you will consider it as a standing instruction to abide by it in the execution of any instrument of compact, which, as a public minister of the United States, you may be called to sign.

After the exchange of the ratification, your attention will be directed to the object of carrying the provisions of the treaty into effect. The orders for the evacuation, by the Spanish officers and troops, of the places occupied by them in the Floridas, will, no doubt, be immediately issued; and, as the transports and escort for conveying them to the Havana, are to be furnished by the United States, it is hoped you will obtain copies of the orders, and transmit them here with the ratification of the treaty. You will think it advisable to keep the Spanish government reminded of the necessity to include in the orders for the delivery of possession, that of all the archives and documents relating to the dominion and sovereignty. The appointment of a commissioner and surveyor, for running the line of the western boundary, must also be kept in remembrance, and notice given to us as soon as possible after their appointment. You will collect from the archives of the legation at Madrid, all the documents relating to the claims of citizens of the United States upon the Spanish government, which have been deposited there, and which come within the description of claims to be exhibited to the commissioners, under the 11th article of the treaty. You will send all these documents, together with the ratified treaty, to this department, retaining descriptive lists of them, and, if necessary, copies of such papers for which no equivalent substitute could be produced in case of their being lost. Should you have reason to believe that any documents which you should be able to specify, were in possession of the Spanish government, tending to elucidate any of these claims, you will endeavor to obtain them. The treaty provides that they shall be furnished at the demand of the commissioners. But, as much time may be saved, if they can be sent here to be ready when the commission will be organized, and commence the exercise of its functions, you will, should the occasion present itself, use your endeavors to that effect.

Certificate of Exchange of Ratifications, referred to in the preceding Instructions.

We, John Quincy Adams, Secretary of State of the United States of America, and Don Luis de Onis Gonzales Lopez y Vara, Lord of the town of Rayaces, Macadina, and Legartera, Member of different Academies and Societies, both national and foreign, perpetual Regidor of the corporation of the city of Salamanca, Knight Grand Cross of the royal American Order of Isabella the Catholic, decorated with the Lys of La Vendee, Knight Pensioner of the royal and distinguished Spanish Order of Charles the Third, Member of the Supreme Assembly of the said Royal Order, of the Council of his Catholic Majesty, his Secretary with exercise of decrees, and his Envoy Extraordinary and Minister Plenipotentiary near the United States of America—certify, that the ratifications of the convention between the said United States of America and his said Majesty, concluded on the eleventh day of August, one thousand eight hundred and two, accompanied with all suitable solemnities; and after due comparison each with the other, and with the original examples of the convention, have been exchanged by us this day.

In witness whereof, we have signed this act in triplicates, and have sealed the same with our respective seals, at the City of Washington, this twenty-first day of December, one thousand eight hundred and eighteen.

JOHN QUINCY ADAMS, [L. S.]
LUIS DE ONIS, [L. S.]

The Secretary of State to Don Luis de Onis.

Washington, 10th March, 1819.

Don Luis de Onis, Envoy Extraordinary and Minister Plenipotentiary from Spain:

Sir: By the eighth article of the treaty of amity, settlement, and limits, signed by us on the 22d of last month, all grants of land in the Floridas, made by his Catholic Majesty, or his legitimate authorities in those provinces, subsequent to the 24th of January, 1818, are declared to be null and void. This date, as you will recollect, was agreed to on the part of the United States, with a full and clear understanding between us, that it included the grants alleged to have been made in the course of the preceding winter, by the King, to the Duke of Alagon, the Count of Punon Rostro, and Mr. Vargas. As these grants, however, are known to the government of the United States only from rumor, without the knowledge of their dates, it is proper that, on exchanging the ratifications, your government should know that, whatever the date of those grants may have been, it was fully understood by us that they are all annulled by the treaty, as much as if they had been specifically named, and that they will be so held by the United States. To avoid any possible misconception, your answer to this statement is requested; and the exchange of the ratifications will be made, under the explicit declaration and understanding that all the above mentioned grants, and all others derived from them, are null and void.

I pray you to accept the assurances of my distinguished consideration.

JOHN QUINCY ADAMS.

Don Luis de Onis to the Secretary of State.

[TRANSLATION.]

SIR: I have received the note you were pleased to address to me of this day's date, in which you state that, by the eighth article of the treaty signed by us on the 22d of last month, it was agreed on the part of the United States that all grants of land in the Floridas, made by His Catholic Majesty, or his legitimate authorities subsequently to the 24th of January, 1818, are declared to be null and void, with a full understanding that it included the grants alleged to have been made in the course of the preceding winter, by the king, to the Duke of Alagon, the Count of Punon Rostro, and Mr. Vargas; and that, therefore, you request of me a declaration that, whatever the date of those grants may have been, it was fully understood by us that they are annulled by the treaty, as much as if they had been specifically named.

With the frankness & good faith which have uniformly actuated my conduct, and, which distinguish the character of the Spanish nation, I have to declare to you, that when I proposed* the revocation of all the grants made subsequent to the dates abovementioned, it was with the full belief that it comprehended those made to the Duke of Alagon, as well as any others which had been stipulated at that period.

But at the same time that I offer you this frank, simple, and ingenuous declaration, I have to express to you that, if my conception had been different, or if it had appeared to me that any of those grants were prior to the date above mentioned, I would have insisted upon their recognition, as the honor of the king, my master, & the unquestionable rights of his sovereignty of his possession, and the disposal of them, obviously required.

I will hasten to transmit to my government due information of the whole; and, impressed as I am, with the conviction of his Majesty's most earnest desire to meet the wishes of the President, I persuade myself that he will, with pleasure, participate in that sentiment, by admitting the explicit declaration which you have requested of me. In the mean time, I beg you will favor me with your answer to the explanations I requested yesterday, in relation to the late act of Congress concerning piracy.

Be pleased to accept the assurance of my distinguished consideration. God preserve you many years.

LUIS DE ONIS.

Washington, 10th March, 1819.

The Secretary of State to Mr. Forsyth.

Department of State,
Washington, 10th March, 1819.

John Forsyth, Minister Plenipotentiary to Spain:

SIR: By the eighth article of the treaty of amity, settlement, and limits, between the United States and Spain, signed on the 22d of last month, all the grants of lands, made by His Chatholic Majesty, or by his lawful authorities, since the 24th of January, in the territories ceded by U. C. M. to the United States in the Floridas, are declared and agreed to be null and void. This date was proposed by Mr. Onis, and acceded to on the part of U. States, with a full and clear understanding, on both sides, that the grants made, or alleged to have been made, in the course of the preceding winter, to the Duke of Alagon, the Count of Punon Rostro, and Mr. Vargas, were among those declared to be null and void. Copies of the grants to the Count of Punon Rostro and to Mr. Vargas, in the form of orders to the governor General of the Island of Cuba, and to the Governor of the Floridas, has been transmitted to this Department by Mr. Erving; the first of which bears date the 6th of February, and the second the 11th of March, 1818; but no copy has been received of that to the Duke of Alagon. As, however, the authenticity of these documents might be denied, and the grants have never been made public, it is proper that the possibility of any future question with regard to these grants, should be guarded against; for which purpose the form of a declaration is enclosed, which it will be proper for you to deliver, on exchanging the ratifications of the treaty, to the Spanish Minister with whom you will make the exchange. The fact of the mutual understanding, that those grants were annulled by the treaty, is fully and explicitly admitted by Mr. Onis, in his answer, dated this day, to a note from me on this subject; copies of which, with a translation of his answer are herewith enclosed. It is not anticipated that any objection will be made to receiving the declaration; if, however, there should be, you will, nevertheless, exchange the ratifications, it being sufficient to give the notice and the proof of the understanding on both sides of the operation of the article, and of the effect which will be given to it on the part of the United States.

I am, with much respect, &c.

JOHN QUINCY ADAMS.

[* The following are the words of the proposition, contained in the letter of Don Luis de Onis to the Secretary of State, of the 16th November, 1818:

"The extent of what I can agree to is, that the late grants made by H. M. in the Floridas since the 24th of January last, the date of my first note announcing his majesty's willingness to cede them to the United States, (the said grants having been made with a view to promote population, cultivation, and industry, and not with that of alienating them,) shall be declared null and void, in consideration of the grantees not having complied with the essential conditions of the cession, as has been the fact."]

Form of the Declaration referred to in the preceding letter.

The undersigned, Minister Plenipotentiary from the United States of America at the court of His Catholic Majesty, is commanded by the President of the United States to explain and declare, upon the exchange of the ratification of the treaty of amity, settlement and limits between the United States and H. C. M. signed by the respective Plenipotentiaries, at Washington, on the twenty second day of February last, that, in agreeing upon the 24th day of January, 1818, as the date, subsequent to which all grants of land, made by H. C. M. or by his legitimate authorities, in the Floridas, were declared to be null and void, it was with a full understanding between the Plenipotentiaries of both the high contracting parties, that among the grants thus declared null and void, were all those made, or alleged to have been made, in the course of the preceding winter, by H. C. M. to the Duke of Alagon, the Count of Punon Rostro, and Mr. Vargas, and all others derived from them. And the ratifications of the treaty are exchanged, under the explicit declaration and understanding that all the said grants are null and void, and will be so held by the United States.

Madrid, ——, 1819.

The Secretary of State to the Minister of France.

Mr. Hyde de Neuville, Envoy Extraordinary and Minister Plenipotentiary from France.

WASHINGTON, 17th March, 1819.

SIR—By the eighth article of the treaty lately concluded between the United States and Spain, all grants of land made by the king of Spain or his legitimate authorities in Florida, before the 24th of January, 1818, are confirmed on certain conditions: all those made after that date are declared null and void.

Since the conclusion of the treaty, a rumor has been circulated, that certain grants made by the King of Spain, in the course of the preceding winter, to the Duke of Alagon, the Count of Punon Rostro, and Mr. Vargas, were made on the 23d of January, 1818. Mr. Forsyth has therefore been instructed, on exchange of the ratifications of the treaty, to declare that it was fully and explicitly understood on both sides, at its signature, that all those grants and all others derived from them were, by the treaty, included among those declared to be absolutely null and void. Mr. de Onis himself, in answer to a note from me, has readily declared that such was his understanding. From the friendly part taken by you, in concert with Mr. de Onis, in this negociation, you were apprized of all the circumstances attending it: and I have to request that you would have the goodness to state your impressions on the subject, particularly in relation to the absolute nullity of those grants, and as far as you think proper, the facts in connection with this transaction, which you have mentioned to me in conversation.

I pray you, sir, to accept the assurance of my distinguished consideration.

JOHN QUINCY ADAMS.

The Minister of France to the Secretary of State.

[TRANSLATION.]

LEGATION OF FRANCE IN THE UNITED STATES:
Washington, 18th March, 1819.

SIR: I was very sure, and you were of the same opinion, that, to destroy the rumor which had been spread, it would suffice to inform the Minister of Spain of it. The loyalty which characterizes him did not permit the smallest uneasiness on the subject. After the declaration of Mr. Onis, mine can be of no importance; however, as you desire (in case the mistake of date should be real) that the fact resulting from the treaty should be well established, and by all those persons who took part, directly or indirectly, in the transaction, I have the honor, sir, to declare to you, in the most formal manner, that it has been understood, always understood, by you, by the Minister of Spain, and I will add, by myself, that the three great grants of land made to the Duke of Alagon, to the Count of Punon Rostro, and to Mr. Vargas, were of the number of those annulled.

The date of 24th of January was proposed and accepted in the complete persuasion, on one part and the other, that these three great grants were subsequent to it.

I will add, sir, because it is the exact and pure truth, that having been charged by Mr. Onis, during his illness, to discuss with you several articles of the treaty, particularly the eighth article, you consented to the drawing up of this article more in conformity with the desire of the Spanish Minister, only on the admission, as a fact beyond doubt, that the three principal grants were and remained null, and as not having taken place. Mr. Onis has not ceased thus to understand it. He has explained himself upon it frankly and loyally, as well since as before the treaty. This mistake of date, if it exists, can then give birth to no difficulty whatever at Madrid. The good faith of Mr. Onis, that of his government, are guarantees too strong to render any other explanations necessary. Between governments, as between individuals, the same laws of honor and probity govern transactions. The convention exists only by the convention; therefore, sir, in this case the simple statement of the fact will be sufficient to rectify the mistake.

In answering, sir, immediately the letter which you did me the honor to write to me, I embrace with much pleasure this new opportunity to assure you of the high consideration with which I have the honor to be, &c.

G. HYDE de NEUVILLE.

Hon. Mr. ADAMS,
Secretary of State.

Observations on the eighth article of the treaty of the 22d February, 1819, between the U. States and Spain, submitted to Mr. de Neuville, 14th July, 1819.

It will be recollected by Mr. de Neuville, that on the 15th of February last, Mr. de Onis being confined to his house by indisposition, Mr. de Neuville, at his request, had a conversation with Mr. Adams, in which were discussed the project of a treaty which had been delivered on the 9th of February, by Mr. de Onis to Mr. Adams, and the counter-project sent by Mr. Adams to Mr. de Onis, on the 13th of the same month.

The ninth article of the project of Mr. Onis was in these words:

"All the grants of land made by his Catholic Majesty, or by his legitimate authorities, in the aforesaid territories of the two Floridas, and others which his Majesty cedes to the United States, shall be confirmed and acknowledged as valid, excepting those grants which may have been made after the 24th January of last year, the date that the first proposals were made for the cession of those provinces, which shall be held null in consideration of the grantees for having complied with the conditions of the cession."

The eighth article of the counter-project sent by Mr. Adams was as follows:

"All grants of land made by or in the name of his Catholic Majesty, in the aforesaid territories, after the 24th January, 1818, shall be held null, the conditions of the said grants not having been performed by the grantees. All grants made before that date, by his Majesty or by his legitimate authorities, the conditions of which shall have been performed by the grantees, according to the tenor of the respective grants, and none other, shall be confirmed and acknowledged as valid."

M. de Neuville's particular attention is requested to the difference between the two projected articles, because it will recal particularly to his remembrance the point upon which the discussion concerning this article turned. By turning to the written memorandum drawn up by Mr. de Neuville himself, of this discussion, he will perceive he has noted that Mr. de Onis insisted "that this article could not be varied from what was contained in the chevalier's project, as the object of the last clause therein was merely to save the honor and dignity of the sovereignty of his Catholic Majesty."

It was then observed by Mr. Adams, that the honor and dignity of his Catholic Majesty would be saved by recognizing the grants prior to the 24th of January, as "valid to the same extent as they were binding on his Catholic Majesty," and he agreed to accept the article as drawn by Mr. Onis, with this explanation (see Mr. de Neuville's memorandum). It was on this occasion that Mr. de Neuville observed that if the grants prior to January 24, 1818, were confirmed only to the same extent that they were binding on the King of Spain, there were many *bona fide* grantees, of long standing, in actual possession of their grants, and having actually made partial settlements upon them, but who had been prevented by the extraordinary circumstances in which Spain had been situated, and the revolutions in Europe, from fulfilling all the conditions of the grants; that it would be very harsh to leave these persons liable to a forfeiture, which might indeed, in rigor, be exacted from them, but which very certainly never would be if they had remained under the Spanish dominion. It will be well remembered by Mr. de Neuville how earnesty he insisted upon this equitable suggestion, and how strongly he disclaimed for Mr. Onis every wish or intention to cover, by a provision for such persons, any fraudulent grants. And it was then observed by Mr. de Neuville, that the date assumed of 24th January of 1818, was not sufficient for guarding against fraudulent grants, because they might be easily antedated. It was with reference to these suggestions of Mr. de Neuville, afterwards again strenuously urged by Mr. de Onis, that the article was finally modified as it now stands in the treaty, declaring all grants subsequent to 24th January, 1818, absolutely null, and those of prior date valid to the same extent only that they would have been binding upon the King, but allowing to *bona fide* grantees, in actual possession, and having commenced settlements, but who had been prevented by the late circumstances of the Spanish nation and the revolutions in Europe, from fulfilling *all* the conditions of their grants, time to *complete* them. It is needless to observe that, as these incidents do not apply to either of the grants of Alagon, Punon Rostro, or Vargas, neither of those grants is confirmed by the tenor of the article as it stands: and that it is perfectly immaterial in that respect whether they were dated before or after the 24th January, 1818, it being admitted on all sides, that these grants were not binding on the king, conformably to the Spanish laws. The terms of the article accord precisely with the intentions of all the parties to the negociation and the signature of the treaty. If the dates of the grants are subsequent to 24th January, 1818, they are annulled by their date; if prior to that date, they are null because not included among the prior grants confirmed.

The Secretary of State to Mr. John Forsyth.

JOHN FORSYTH, Esq. Minister Plenipotentiary of the United States, Madrid.

Department of State.
Washington, 18th Aug. 1819.

SIR: Captain Read, of the Hornet, has delivered to me your despatches of the 10th, 17th, and 22d of June, which have been submitted to the consideration of the President.

However extraordinary the conduct of the Spanish government in relation to the treaty, signed on the 22d of February last, has been, the President is unwilling to abandon the hope, that within the period of six months, allowed for the exchange of the ratifications, a sense of justice and of decent regard for the public faith of the king and nation, solemnly pledged by the treaty, will prevail over the individual intrigues and lurking influence which prompted the delay that has taken place.—Should this expectation, however be disappointed, and should the treaty remain unratified by Spain at the time when you shall receive this despatch, you will immediately make an official communication to the Minister of Foreign Affairs, stating that the ratification of Spain, with the explicit understanding on her part, that the alledged grants to the Duke of Alagon, Count Punon Rostro, and Mr. Vargas, and all others which may have been made under the same circumstances are, by the 8th article of the treaty, null and void, and will be so held by the United States, will be accepted as valid; and that you are authorised to receive the Spanish ratification in exchange for that of the United States, though after the lapse of the stipulated six months; provided the exchange shall be immediate, and in such time that you can despatch the ratified treaty by the messenger who will be the bearer of this, in season to arrive here before the meeting of Congress on the first Monday in December; that, if the ratified treaty should not arrive here at that time a full communication will be made by the President to Congress, of all the transactions relating to the treaty, and such measures will be adopted by that body as they shall think required by the exigency of the case; that, whatever their determination may be, the Spanish Government will be responsible to the United States for all damages and expenses which may arise from the delay or refused of Spain to ratify, and from the measures to which the United States may resort, to give efficacy to their rights; and that, for the indemnities to which they will be justly entitled, for this violation of faith by Spain, the United States will look to the territory west of the Sabine river.

The only reason assigned by the Minister of State, ad interim, Salmon, for the postponement of the Spanish ratification, was the determination of the King, founded upon the great importance of the treaty, to act upon it with full deliberation. This may have been sufficient to justify delay within the period stipulated by the treaty; but after the expiration of that period, can no longer be alledged. Delay beyond that period will be a breach of faith; for the treaty, in all its parts, from the moment of its signature by Mr. Onis, and the ratification of the United States, was as binding upon the honor and good faith of the Spanish king and nation, as it would be after the ratification. It is scarcely supposable that Spain will contest this position, or that it should be necessary to present it to her view in the following terms, of the full power of Mr. Onis, the original of which signed by the King of Spain, was delivered to me before the signature of the treaty. The words of his Catholic Majesty are, after authorising Mr. Onis to treat, "negociate, and conclude a treaty, whereby past differences may be adjusted, and a firm and lasting peace established between the two Governments; obliging ourselves, as we do hereby oblige ourselves, and promise, on the faith and word of a King, to approve, ratify, and fulfil, and to cause to be inviolably observed and fulfilled, *whatsoever may be stipulated and signed by you*; to which intent and purpose, I grant you all authority and full power in the most ample form, thereby as of right required."† If language so explicit and unqualified were, in regard to its import, susceptible of any doubt, founded on the usage which requires the ratification of the sovereign for the full consumation of a treaty, there is nothing dubious or uncertain in the extent of obligation resting upon him, by the signature of his Minister, vested with such a full power.—The following passages from Vattel and Martens, are decisive authorities upon the principle:

"Sovereigns treat together by the agency of their attorneys or mandatories, clothed with sufficient powers; they are commonly called Plenipotentiaries. All the rules of the law of nature, concerning things performed by commission, are here applicable. The rights of the agent are defined by the authority given him. From this he must not depart: *but whatever he promises, within the terms of his commission, and according to the extent of his powers, is binding upon his constituent.*"

"All this time, to avoid all danger and difficulty, Princes reserve to themselves the right of ratifying that which has been concluded by their minister in their name.—The full power is merely a commission *cum libera.*——If this commission were to have its full effect, it should be given with the utmost circumspection. But, as Princes can be constrained to fulfil their obligations only by force of arms, the custom has arisen of relying upon their treaties only after they have sanctioned and ratified them. Whatever the Minister has concluded, remaining ineffectual until the ratification of the Prince, there is less danger of giving him a full power. But to refuse, with honor, to ratify that which has been concluded in virtue of a full power, the sovereign must have strong and solid reasons for it; *and particularly he must shew that his minister transcended his instructions.*"—Vattel, Book 2, chap. 12. § 156.

"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 convensions 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 negociation, keeping within compass with respect to his public full powers, has gone beyond his secret instructions, and consequently has rendered himself liable to punishment, or when the other party refuses to ratify."—Martens Summary, Book 2, chap. 1. § 3.

The obligation of the King of Spain, therefore, in honor and in justice, to ratify the treaty signed by his Minister, is as perfect and unqualified as his royal promise in the full power; and it gives to the United States the right equally perfect to compel the performance of the promise.

Should it be suggested that the United States themselves have, on more than one occasion, withheld or annexed conditions to the ratifications of treaties signed by their Plenipotentiaries in Europe, it will readily recur to you, that by the nature of our constitution, the full pow-

† "Obligandonos y prometemos en fe y palabra de Rey que approbaremos, ratificaremos, cumpliremos y haremos observar y cumplir inviolablemente quanto por vos fuere estipulado y firmado para lo qual os concedo todas las facultades y plenos podores en la forma mas amplia que de deresho se requieren."

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