THE SIGNIFICANCE OF THE TREATY OF 1806

by

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CHAPTER I.

THE DEVELOPMENT OF THE ISSUES.

The comradeship of Britshers and Americans in the Great War of Democracy is a fitting climax to the friendship of the English speaking peoples in recent years. This increasing realization of the true unity of aims and interests between us was strikingly emphasized in connection with the plans for the celebration of the hundred years of peace following the Treaty of Ghent. This new attitude toward England has even raised the question whether there need have been a second war between the United States and England. Various recent studies have been made of our relations about the period of the War of 1812, but none of them have paid sufficient attention to the story of the rejected treaty of 1806. The purpose of this thesis, therefore, is to take up the negotiation in the light of certain neglected evidence and to consider incidentally whether by the acceptance of the treaty of 1806 by the two countries, the War of 1812 might not have been averted.

The fundamental cause of the War of 1812 was the conflict of the British Navigation Acts with the development of American Commerce. However, other issues grew out of this main cause and their origin must be sought far back in the early Colonial Commercial, and Naval policy of Great Britain. Three great issues involved were: (1) The general trade regulation between America and the British domains, (2) the regulation of trade with foreign countries and their colonies, (3) the rights of American seamen.
The preliminary history of these issues falls into three periods, (1) the Colonial, ending with the treaty of Versailles, September 3, 1783 by which Great Britain recognized America's political independence, (2) the period from 1783 to Jay's Treaty in 1794 by which America secured a grudging recognition of Commercial independence, and (3) the period of supplemental negotiations (1794-1803) which dealt chiefly with issues not fully settled by the two former treaties.

During the first of these periods the colonies which were to become the original United States were under the old British Colonial system. For example, soon after the first colonies were planted in America, Great Britain realizing her essential need to predominate upon the seas, began to formulate a colonial trade policy by a series of measures known as the Navigation Acts. The object of these acts was to regulate the commerce between England and her colonies and provided that goods from the colonies must be shipped in vessels built in England, manned by English seamen, belonging to English subjects. The British-American Colonies were divided geographically into two primary groups, those of the West Indies and those of the Continent. Both groups were primarily interested in agriculture and dependent upon the mother country for their manufactured goods. But owing to differences of climate the products of the two groups were essentially different and mutually necessary for each other. Thus Great Britain soon found out that the Continental Colonies could supply the West Indies with such articles as cotton, lumber, meat, and livestock a great deal easier and cheaper than she could while the Continental Col-
Onies must get their sugar, molasses, etc., from the West Indies. Consequently a large intercolonial trade sprang up. It is in this trade between the British Colonies that the first issue has its origin.

The second issue, the rights of Americans to trade with foreign countries and their colonies dates back to the modification of the Navigation Acts in 1731 by which the Southern Colonies of the Continent were allowed to ship rice to any part of Europe south of Cape Finisterre. This trade still had to be carried on in British ships and in many instances landed in England before being re-exported. Nevertheless, a large and important international colonial trade developed especially between the insular colonies and the Continental Colonies. But it was destined to be of short duration because in 1756 the Seven Years War broke out between France and England. To take the place of the American source of supplies, France threw open her West India ports to the neutral European traders for she feared she could not herself supply them in the face of the British Navy. England in reply at once formulated her famous Rule of 1756 which forbade to neutrals the right to trade in time of war with ports that were not open to them in time of peace. As time went on, England realized more and more that this rule was a powerful weapon for maintaining her supremacy on the seas. Thus in her wars of 1776-83, and of 1793-1802, and notably in her famous Order in Council of January 7, 1807, these same principles are reasserted.

The third issue, the rights of American seamen, really grew out of the other issues because the colonial trade drew large num-
bers of British seamen to America. This was a great disadvantage for the British Navy unless America was the scene of war, because such seamen were out of reach of impressment. Moreover, during Queen Anne’s reign, an act was passed which exempted seamen born in America, from impressment. In these conditions and especially in the chance of disputes as to place of birth where men spoke the same language is seen the foreshadowing of the greater troubles attending the practice of impressment after America became a separate nation.

The American colonies declared their independence in 1776 and their political independence was recognized by Great Britain in 1783. This date marks the beginning of the second period of our problem. With the recognition of American independence in 1783 the relations between Great Britain and America were entirely changed. The colonies became states with a government of their own and the English regulations no longer applied to them. They no longer shared as Englishmen in English colonial trade. On the other hand, they were free to work out their own commercial policy and their relations in regard to enemies of Great Britain were also changed because they were now entitled to be neutral in any war involving Great Britain and to enjoy the rights of any independent neutral nation. Therefore, we have new versions of the three old issues of (1) the regulation of commerce between America and the British Empire, (2) the regulation of American trade with foreign countries and colonies, (3) the rights of American seamen.

The first issue came up as soon as England recognized Amer-
ican independence for the Navigation Acts were immediately enforced and American commerce with the West Indies was restricted. In the emergency, William Pitt introduced a bill into the House of Commons to temporarily regulate the commerce between the two nations. It raised a storm of protest in Great Britain and was defeated in the Commons. A proclamation then was issued which permitted trade in a long list of specified articles between the West India Islands and the American Continent, but these articles had to be carried in British vessels, built in England, and manned by British seamen. Soon after the Pitt ministry fell and he did not return to office until the following year. America had great hopes after his return that he would again try to definitely adjust the commerce between the two countries but the subject was not reopened. Instead the proclamation regulating Anglo-American trade was annually reissued until 1794. Only once did Parliament interfere with this regulation. In 1788 a law was passed, in the strict spirit of the Navigation system, confining the trade with the West Indies to British built ships and to certain enumerated articles, otherwise intercourse with the United States throughout this period could be modified or annulled by the single will of the Executive; whereas that with other nations was fixed by statute—the Navigation Act, and could be altered only by the legislature.

The second issue between America and England came up again when war was reopened between England and France in 1793. The war had no sooner begun than the latter country as in 1756 threw open to neutrals, the trade of her West India Colonies. She did this because England, being mistress of the seas, it seemed like-
ly that communications between France and the islands would be much interrupted during the war. By opening that trade to neutrals a complete isolation of these colonies would be prevented. The Americans, who, as allies of France since 1788, had enjoyed a limited trade with the French colonies, were quick to take advantage of this great opportunity. The spring of 1793 was not far advanced ere hundreds of American ships were unloading American products and loading French products in the French islands. England grew jealous of this new trade and sought to limit it by a series of orders in Council. The first was issued June 8, 1793 and it provided for the seizure and adjudication of vessels and cargoes engaged in this trade. This was a wide infringement of neutral rights but the principle announced in 1789 by the Northern Powers of Europe had not been accepted by Great Britain. Protest as she might, America had no recourse but war and she was not prepared for that. Dismal news came from the West Indies that large numbers of American ships were seized, the seamen and passengers were insulted, locked in prison, and browbeaten by corrupt and ignorant island officials. Moreover, when protests were made only contemptuous answers were received. Another Order in Council was issued November 6, 1793 which provided for the seizure and condemnation of all ships carrying the property of French subjects. The effect of this decree was that it nearly paralyzed the American trade and a storm of protest arose. These two Orders were somewhat modified by the Order in Council of January 8, 1794, which limited the right of seizure to vessels bound from the West Indies direct to Europe.
America could not suffer all these indignities and do nothing to retaliate, consequently in December, 1793, Jefferson sent to Congress the report which Congress in 1791 had requested him to prepare regarding American commerce with foreign peoples. He actually prepared the paper in 1792, but did not send it to Congress until the above mentioned date. The report embodied the theory of equal trade privileges based upon the economic doctrine of free trade, and he also advocated that if a nation should find it necessary to put restrictions on trade with America, she should then retaliate. A few weeks later Madison offered in the House, seven resolutions the purpose of which was to put Jefferson's recommendations into effect. These resolutions were debated and postponed. However, in March, 1794, news were received of the British Order of November 6, 1793 and an Embargo Act was passed on the 26th of March. It was to be in force one month and was later extended for another thirty days. Meanwhile even before receiving the news of the British Order, the American Government had decided to send an Envoy Extraordinary to England in order to see if war could be averted.

While the two nations were contending over the issues of Colonial trade, the third issue was brought up for consideration. This issue as has been stated, involved the rights of American seamen. As early as 1787 Adams, American envoy to London had remonstrated with the British Government against the practice of impressment and declared that the American flag should protect the crew.

In 1792 Jefferson, Secretary of State, instructed Thomas Pinkney, American Minister at London to confer with the British Foreign
Secretary in order to make some satisfactory arrangement on the subject of impressment. The British Government suggested certificates of citizenship, but Jefferson objected because it would be impracticable for seamen always to carry such certificates. He upheld the position that the vessel when outside of foreign police jurisdiction protected the men on board, yet, in order to prevent a vessel from becoming an asylum for fugitives, he was willing that the number of the crew be limited in proportion to the tonnage of the vessel and that one or two British officers might be allowed to board an American vessel to ascertain the number of men on board. No press gang should be allowed to go on board until it should be found that there were more than the stipulated number of seamen on board, and until the master had refused to deliver the extra men, who were to be named by the master himself. Even under these circumstances the American consul in every instance was to be called in to protect bona fide American citizens.

Thus matters stood at the beginning of the third period when John Jay was chosen to go as envoy to England to negotiate a treaty on the unsettled differences pending between the two countries. The main issues were the same as those of the two previous periods but the third one in regard to the rights of American seamen was not mentioned in Jay's instructions nor included in his treaty of 1794. His instructions embraced four large features: (1) to secure the execution of the treaty of 1783, (2) to secure compensation for American ships that had been seized, (3) to secure a treaty of commerce, (4) to procure co-operation with the Northern Powers in armed neutrality for the protection of neutral
trade, in case England would not agree to a treaty. The instructions in regard to the commercial treaty comprised the following points: (1) to secure reciprocity of trade particularly in regard to the West Indies, (2) the limitation of the right of search, (3) the recognition that free ships make free goods, (4) to secure assent to the American contention with regard to blockade that to be binding it must be effective. The first of these points involves the first great issue, while the remaining three come under the second, that of trade regulation with foreign countries and colonies. When the negotiations were taken up the main questions were found to be indemnity for maritime seizures, West India trade, impressment, boundaries and debts unsettled under the Treaty of 1783.

Taking up the question of indemnity the origin is found in the British Order in Council of November 6, 1793. This order directed the seizure of all ships laden with goods which were the products of French Colonies and all ships carrying supplies to these colonies. For these injuries Jay was to seek compensation. The British justified their act by the Rule of 1756. Jay apparently satisfied himself by his interviews and observations of the state of public feeling in England that at the moment it was vain for a country without a navy to expect Great Britain to surrender her principles and the treaty which he concluded in November contained only a reference to indemnity for the seizures made in the West Indies.

The second issue was provided for in the 12th Article of the treaty which will be discussed later.
The third question which was that of impressment was not mentioned in Jay's instructions but it was brought up in the course of the negotiations. In a letter written by Jay to Lord Grenville he alluded to the hardships suffered by the American citizens and expressed his confidence that the King would liberate American citizens wrongfully detained and would in the future abstain from such proceedings. Lord Grenville replied that if American citizens had been impressed it had been contrary to the desire of the King. However, he admitted such cases might occur owing to the difficulty of discriminating between the American and British seamen, but stated that the Americans were invariably released. No provision then was made in the treaty against impressment.

This treaty was signed November 9, 1794. It provided for the surrender of the northwest posts by June 1796, and a joint commission to settle claims and boundary disputes. The treaty of commerce varied greatly from the instructions given by the American government to Jay. The 12th Article which regulated the West India trade provided that American ships of not more than seventy tons could carry American products under certain conditions such as payment of duties and the exceptions of certain commodities. It further provided that all British ships should trade with the United States without discriminations and Americans were forbidden to carry molasses, sugar, coffee, cocoa, and cotton from the islands to any ports except those of the United States. Other articles provided that England was to have free navigation of the Mississippi River and no enemy of England should be allowed to fit out privateers in American waters.
The treaty was received in America in March, 1795 and when its provisions were made public it aroused a storm of indignation. Everywhere public meetings were held and resolutions condemning the treaty were passed. In the Senate there was also much opposition to the treaty so that its ratification was advised by only a very close vote, and then only on the condition that the clause in regard to the West India trade be stricken out.

Jay returned to America the following spring and Rufus King was sent as minister to England. His negotiations took up the same three main issues, for Jay's treaty having failed to settle those questions, he had the same great problems to face that his predecessors had wrested with for the last two score years. He took up the issue of neutral trade because the treaty of 1794 did not relieve the American ships from seizure and they continued to suffer as if no treaty had been concluded. On February 24, 1801, the House of Representatives called for a report upon the depredations committed upon the commerce of the United States by Great Britain, of which complaint had been made to the Department of State. Secretary Marshall submitted a report of seventeen cases that had been complained of since January 1, 1800.

Prior to this report the Secretary had instructed King to make complaint to the British Government of these seizures and obtain some adjustment. King was able to secure from the British Government a modified interpretation of the Rule of 1756 to the effect that trade between a neutral and the enemies' colonies should be permitted and that the produce of the colonies of the enemy actually imported into the neutral country might be re-exported then to any other place, even to the mother country.
of that colony which supplied the produce. Soon after this modification was secured, the treaty between England and France was concluded and the neutral commerce of the United States lost the advantages it had gained during the war.

After the peace of Amiens the question of regulating the trade between America and Great Britain was again taken up. Great Britain consented to abolish all discriminating duties affecting the navigation and commercial intercourse between the United States and England. But when the bill dealing with the duties on exports, imports, and tonnage was finally passed, it was found to work greater hardships on the United States than before. War again broke out between England and France in May, 1805 and the measures employed by Great Britain in the preceding war were again revived by the Order in Council of June 24, 1803.

King realized he had failed to adjust matters, as did the ministers before him, and he began to make plans for returning home.

When the United States sent King as minister to England, a law was passed by Congress to prevent an excuse for the impressment of seamen. This law was passed on May 28, 1796 which provided for the certification of American seamen. Pickering, Secretary of State, transmitted this law to King and urged the importance of obtaining some satisfaction from the British government on this topic. King at once took up the issue and proposed to the British government that American consuls should be authorized to grant certificates of citizenship to such seamen as should prove themselves entitled to them and that the British officers be instructed to respect them. The English government objected to this proposal and also to the general law passed by
Congress. The following year the British submitted a proposal, which provided that refuge should not be given to deserters, and that they should be delivered up on demand when proper proof was submitted that they were deserters. Also consuls and vice consuls might cause the arrest of those who had deserted after applying to the courts for necessary power, to be granted upon proper proof. Neither party was to demand the delivery of any subjects, sailor or citizen belonging to the other party who had been employed on board the vessel of either nation. Moreover, the two states should also agree to adopt effectual means for restoring deserters.

King rejected this proposal and submitted a counter project which contained reciprocal engagements for the surrender of deserters upon the condition that the practice of impressment should be discontinued in respect to private vessels as well as public vessels.

The general pacification of Europe in 1801 had brought a respite to British ships of war, and impressment therefore ceased for the time as there was no need of the practice in order to secure seamen. King still continued to urge, however, that some provision should be made in regard to impressment and when there seemed likely to be a rupture of peace between France and Great Britain he prevailed upon Lord Hawkesbury, Secretary of Foreign Affairs, to consent to a convention which would provide against this practice. He submitted a project to this effect but before it was signed the British Commissioner, after a consultation with Sir William Scott, Judge of the High Court of Admiralty, proposed that the narrow seas should be exempted. King considered this a
mere subterfuge and an extravagant pretention for Great Britain to revive the doctrine of "Mare Clausum", and he felt compelled to abandon the negotiations.

Thus he failed to secure an adjustment of the three main issues, (1) the regulation of American trade with other foreign countries and colonies, (2) the regulation of American trade with the British Empire, (3) the rights of American seamen. However, he was successful on one question, that of indemnity. This put an end to the long contest; it provided that the amount that had been awarded by a commission under Jay's treaty to Americans for spoliation should be paid and it was ratified by the President and Senate. King saw that further negotiations were useless and he returned to the United States in the summer of 1803. He was succeeded as minister by James Monroe, who was appointed April 18 of that year.
Notes for Chapter I.

1. Mahan, Sea Power and its Relation to the War of 1812, 18.
2. Ibid, 24.
8. Mahan, Sea Power and its Relation to the War of 1812, 93.
10. Ibid, 122.
14. Ibid.
15. Channing, History of the United States, 144.
17. Ibid, 6.
19. Updyke, The Diplomacy of the War of 1812, 73.
23. Ibid, 12.
CHAPTER II.
THE NEGOTIATION OF MONROE, 1803-04.

On January 11, 1805, Jefferson nominated James Monroe of Virginia as Minister Plenipotentiary and Envoy Extraordinary to France and Spain to negotiate a treaty in conjunction with the resident ministers at Paris and Madrid. With the Spanish Government a treaty was to be negotiated over the right of deposit at New Orleans, and with the French Government a settlement of the rights and interests of the United States in the Mississippi River and territory eastward thereof. Monroe reached Paris on April 12th and on the 13th the French minister proposed to sell Louisiana, offering to take sixty million francs plus the claims upon the French treasury to the amount of twenty million. As a result the famous Louisiana Purchase Treaty was signed and dated back to April 30, 1803.

Meanwhile on April 18th, Jefferson appointed Monroe as minister Plenipotentiary to Great Britain. He wrote to Livingston (the American Minister to France), and to Monroe on the 18th of April, enclosing two blank plenipotentiary commissions and letters of credence to the French and English Governments, respectively. Jefferson's instructions were that the British Commission be filled in with the name of Mr. Monroe unless his mission to France should make him undesirable to the British Government. In this case, Mr. Livingston's name should be inserted in the English commission and Mr. Monroe's name in the French commission. To provide for the event of Mr. Livingston's translation to London, a letter of leave was also enclosed. This was not
needed, however, as Monroe took the London appointment.

Monroe's mission to England involved five objectives:

(1) He was to succeed King who had returned to America; (2) He was to negotiate a commercial treaty. For the 12th Article of the Treaty of 1794 which regulated commerce of Great Britain and her possession with the United States provided, "that every matter and everything therein contained shall be in force during the continuance of the war in which his majesty is engaged and also two years from and after the date of the signature of the preliminary, or other articles of peace by which the same may be terminated, and it is further agreed that at the expiration of said term the two contracting parties will endeavor to further regulate their commerce in this respect, according to the situation in which His Majesty may then find himself with respect to the West Indies and with a view to such arrangements as may best conduce to material advantages and extensions of commerce, and the said parties will then also renew their discussions, and endeavor to agree whether in any and what cases, neutral vessels shall protect enemy's property; and in what cases provisions and other articles not generally contraband may become such". (3) He was to negotiate a renewal of the treaty of 1794. For the 28th Article of that treaty provided "that the first ten articles be permanent and that the subsequent articles except the 12th be limited in their duration to twelve years to be computed from the day on which ratification of this treaty shall be exchanged but subject to this condition, that whereas, the said twelfth article will expire by the limitation therein contained, at the end of two years from the signing of the preliminary or other articles of peace, which shall terminate the
The present war in which His Majesty is engaged, it is agreed that proper measures shall, by consent, be taken for bringing the subject of that article into amicable treaty and discussion, so early before the expiration of the said term as that new arrangement on that head may by that time be perfected and ready to take place. (4) Monroe was to secure some agreement on impressment. Lastly (5), he was to cultivate friendly relations with Great Britain.

Thus it is easy to see that in the main, Monroe had to deal with the same three vital issues which we have already been considering, namely, (1) the regulation of American trade with the British Empire, (2) the regulation of trade with foreign countries and colonies, (3) the rights of American seamen. These issues, to be sure, are complicated by other questions that constantly come up, but the reader should not lose sight of these fundamental points.

Peace had been made between France and Great Britain at Amiens March 2, 1802. But on May 18, 1803 Great Britain renewed her war with France. On the same day by an interesting coincidence, Madison wrote to Monroe expressing his fears that if war were declared the question of neutral rights, which must again be discussed, would give the United States much trouble. He said, "It is to be expected that England will adhere to her doctrine and probable that it may be opposed by Russia and other powers to the North. To direct our course with advantage in reference to that question will require all the moderation and wisdom of our Government". On June 19 Monroe wrote to Madison
acknowledging the instructions of April 18 and told him that he thought it would be advisable to proceed to England at once. The departure of Mr. King from that country without nominating a charge des affaires might expose the United States' commercial affairs to much embarrassment.  

Monroe then notified the French Minister of Foreign Affairs of his intentions of going to England, giving as his reasons that King had returned to America and left no one in charge of American affairs and propriety demanded a representative. He asked the minister to communicate his intentions to the First Consul and ask for an audience of leave. Talleyrand procured the audience and Monroe was presented at St. Cloud on June 24. He told Bonaparte the reasons for his going to England and assured him of the President's high respect and esteem for Bonaparte himself and the French Government and his earnest desire to preserve peace and friendship with them. The First Consul reciprocated the sentiment, saying that he wished friendship between the two Republics and that he regarded the President as a virtuous and enlightened man, who understood and pursued the interest of his country as a friend of liberty and equality. He further observed that there was no rivalry between the United States and France because relations between them were chiefly commercial, but he added a warning that the United States must be on her guard and must not give the protection of her flag to the British during the war. Monroe replied that the latter was a question which merited all his deliberations and candor.  

Though he requested his passports on June 24, he was kept waiting until they could be signed by Bonaparte. Leaving Paris
about June 11, he reached London on the 18th and at once notified Lord Hawkesbury of the British Foreign office of his arrival as minister, requesting a day on which his letter of credence could be presented. Lord Hawkesbury replied that he would receive Monroe the next day, the 21st, at one o'clock. The meeting took place at the time set and Hawkesbury told Monroe that he was sorry that he had not arrived a few days earlier in time to have been presented at the last levee. He also informed Monroe that Sir Stephen Cottrel would present him to the King. During this interview very little conversation took place on political subjects. Lord Hawkesbury merely observed that all points in which there had been trouble had been arranged.

Sir Stephen Cottrel called upon Monroe August 14 and told him he would be presented to the King on Wednesday, the 17th, and on this day Lord Hawkesbury presented him. The audience was a private one and Monroe endeavored, in a short address, to do justice to the amiable policy of the United States Government toward the British Government. He informed the King of the President's desire to maintain the best understanding between the two nations and of his own desire to cultivate this friendship by a fair and honorable conduct. He referred to the motives of interest that were felt, and acknowledged, in favor of the friendly policy of the United States and observed that he hoped Great Britain would reciprocate. The King replied that nothing was more reasonable than what Monroe had told him and that since the Revolution he had taken an interest in American welfare and wished the United States prosperity. He also said that the motives for a sincere and constant friendship were many
and strong, mentioning their common origin, the fact that they spoke the same language, and also calling attention to the commercial intercourse that existed between the two countries. On the whole the reception given Monroe seemed to be a very favorable one and to bid fair for a speedy agreement. Alas that such hopes were disappointed for, as we shall see, the negotiations were to be prolonged and bitter, ending in the conflict between the two nations.

In October, Monroe wrote to Robert Livingston at Paris and told him that it would take the utmost degree of circumspection and prudence to fulfill the expectations of the United States Government, that it was expected that Mr. Pitt would be decidedly in the opposition at the opening of Parliament, and that the questions which would be discussed at the opening of Parliament would probably be highly interesting to Europe and America.

In the mean time Monroe had a conference with Mr. Addington, the Prime Minister and Mr. Yorke, Secretary of State of the Home Department, on the subject of the relations between the two governments. Monroe endeavored to impress upon them the amicable policy of the United States. He referred to the treaty but did not specify in particular the conditions upon which it ought to be renewed, nor whether it was considered as expiring with reference to the preliminary or definitive articles of the late treaty of peace. He also intimated that outrages had been committed by the impressment of American seamen. In answer to this, Mr. Addington and Mr. Yorke assured Monroe that their government would try and adjust those matters.
The British newspapers thereupon reported that a negotiation was pending between the United States and Great Britain for the renewal of the treaty of commerce of 1794, and it was said that Monroe was conducting his part in a high tone. Monroe took no notice of these reports otherwise than to remark that nothing had passed between the British Government and himself but what was of a friendly and conciliatory nature. These newspaper notices (according to Monroe's report home) caused a sensation in England and furnished proof that any collision with the United States would be deemed a misfortune to the English Government at this time.

Several weeks now went by, during which there seemed to be little progress toward concluding a treaty. On November 25, Monroe wrote to Madison and told him of dining with Lord Hawkesbury and Lord Castlereagh and of their discussion on the French treaty. Monroe told them the substance of the treaty and they asked whether there was any restriction of British commerce in favor of France. Monroe replied that Great Britain and France stood on equal footing; that the treaty touched only the ports of the ceded territory and exempted France there only from foreign duties for twelve years and that Great Britain would be admitted to these ports on the same terms as to other American ports. In reporting this to his government, Monroe added that in all conversations he had had with those in power in England, they had considered the Louisiana cession a glorious thing for the United States. In closing his letter he said, "You will see by the Gazette there is much discussion about the renewal of our treaty of 1794. I am strongly impressed with the sentiment that we had better make no treaty at present, we can get everything
Moreover he suggests the following objections against entering into a treaty:

1. He would not be likely to obtain one that would be accepted without taking a hostile attitude which would do more harm than the treaty would do good.

2. The West Indies were in a course of revolution and there was a strong probability that the blacks would drive European powers from the islands.

3. In case of neutral rights, the United States was being too well treated to justify particular pressure and Great Britain did not wish the American Government to sacrifice her rights.

A week or two later, Monroe presented a note to the British Commissioner relating to the impressment of American seamen. The note was very detailed, and fully explained the rights and views of the United States, but no specific point was positively insisted upon.

In the meantime America was becoming more and more indignant toward Great Britain for the impressing of American seamen. The President and the Senate asked Madison to transmit a report regarding impressed seamen. Madison transmitted a report which showed that there had been forty-three impressments of citizens of United States, and twelve of this number had protection ten were natives of the British dominion, and not stated to be naturalized as American citizens; seventeen of all other countries who were not stated to have been naturalized in the United States. Accompanying this report were extracts from letters received by United States consuls abroad which showed an increase in the number of impressments.
Such was the status of the negotiations at the close of 1805. Nearly eight months had passed since Monroe had come to England and there still seemed to be little hope of an arrangement of commercial issues between the two governments. He also had presented his note on impressment but had received no answer and could expect none for the situation of England, menaced daily with a French invasion, rendered it hopeless to press the American demand on the subject. Another obstacle was that Monroe had not been given full power to enter into a treaty with Great Britain. For it was not until January 5, 1804 that Secretary of State Madison sent the necessary formal instructions.

Madison gave these reasons for delaying the instruction:

1. The United States expected Great Britain to formally notify her, as a neutral power, of the state of war between Great Britain and France. (2) He expected the arrival of Mr. Merry as British Minister and if he should be charged with such a notification this might furnish a favorable opportunity for commencing, at Washington, the explanations and discussions which must precede a thorough correction of the wrongs that the United States had experienced.

Madison, in fact, had called Merry's attention to the subject and he seemed to be friendly but the only thing which passed in writing was a note concerning the pretended blockade of St. Domingo. The President's plan, Madison went on to explain, was to get the most difficult subjects out of the way, and with this in view, the plan of the convention, with which Monroe was charged, was limited to cases of impressment of seamen, blockade, visitation, and search, contraband of war, and trade with hostile colonies.
The project of the convention sent to Monroe contained thirteen articles. For Articles I, VII, VIII and IX, a second, and ultimate, article was proposed. In case the first could not be secured then the second was to be submitted.

Article I. Provided that no person upon the high seas and without the jurisdiction of either party should be demanded or taken out of any ships or vessel belonging to citizens or subjects of one or the other party by the public or private armed ships belonging to, or in the service of the other unless such persons should be at that time in the military service of the enemy of the other party. In case the British negotiators would not agree to this article, the commissioners were to substitute another which should not exempt any person from impressment if he could be proved to be a British subject. This differed from the first formula in that it exempted all persons unless they were engaged in the military service of the enemy.

Article II. Provided that no person residing in the country of the other could be made to serve on armed or private ships of that country, and persons thus held were to be liberated and given recompense to return to their own country.

Article III. Stated that armed ships should avoid coming within cannon shot of vessels of the other party unless storm-driven and in no case must a belligerent compel such vessels to send a boat, or her papers, or men, to the searching vessel. The belligerent vessel might, however, send a boat with two or three men who could make inquiry concerning the
vessel and her cargo.

Article IV Listed the articles considered as contraband. All articles not listed were to pass free, unless they were enemy property. "Enemy property" was not to be interpreted as comprising merchandise of enemy growth or manufacture which was acquired by a neutral country and transported by neutral ships.

Article V Stipulated that when a prize court passed judgment a copy of the sentence should, if demanded, be delivered to the commander or the agent of the vessel without delay.

Article VI Declared that a blockade to be binding must be effective.

Article VII Provided that a vessel was not liable to capture unless it was previously warned before entering or clearing from a blockaded port.

Article VIII Provided that no refuge should be afforded deserting captains, officers, sailors, or mariners and they should be given up on proper proof that they were deserters.

Article IX Provided that no protection would be afforded officers and sailors who deserted from the service of the other party.

Article X Provided that no stipulation could be construed to empower the civil or military officers of either party to forcibly enter the other's ports or jurisdiction, or the vessels of the other upon the high seas.

Article XI Prohibited the carrying away of any seamen or soldiers of the other party.

Article XII Stipulated that neither party should allow cargoes of contraband to clear from its ports to an enemy port.
Article XIII Provided for the ratification of the convention which was to be in force five years.

Madison, in explaining the instructions said that nothing in the treaty stipulated against seizures along the American coast or in the American harbors, because it would not be honorable in Great Britain to stipulate against such practice, nor in the United States to recur to stipulation as a security against it. On the second article, Madison agreed that the alleged right of impressment was not only unsupported by treaties but every principle of justice and reason was against the practice. By its exercise persons were deprived of a regular trial which was granted when mere property was involved. Thus, decisions were left to the caprice or personal interests of the officers, whereas, when such decisions were given in the case of property they were made by an impartial court, not by the captain himself.

In a letter of February 14, 1804, Madison notified Monroe that the boundary treaty negotiated by King with Lord Hawkesbury had been ratified with the exception of the fifth article. The objections to this article seem to have arisen from the convention with France, ceding Louisiana to the United States and the presumption that the line to be run in pursuance of this fifth article of King's treaty might be found, or alleged, to abridge the Northern extent of that acquisition. Madison authorized Monroe to pay to the commissioners the amount stipulated in the fourth article of the convention.

Meantime in England there had been no change in the status of affairs. The negotiations seemed to be at a standstill. The
King being seriously indisposed, it had been six months since he had held a levee and there was also much talk of a change in the ministry. Monroe endured all this delay with patience but chafed under his treatment by the British officials. He wrote to Madison saying, "We do not have a high station. We have no fixed place and precedence seems to be given to the most subaltern powers, to Portugal, Naples, Sardinia, and powers which do not have one one-hundredth part of the political weight we enjoy even at this court". Monroe complained that although he visited the minister the calls were never returned. It is probable, however, that he would have received better treatment if it had not been for the "Merry incident". For when Mr. Merry went to America as minister from England, he notified the President of his arrival and Jefferson appointed a day to receive him. When Merry arrived, Jefferson received him in his carpet slippers and old coat. Merry took this as an insult and wrote several letters to his government and it was during the time the Queen passed Monroe in the drawing room and did not as much as glance his way. He felt these slights keenly but decided that he stood on the same ground as his predecessors and thought it best to be satisfied and make the best of the situation. He wrote to Jefferson that several incidents occurred in the relations of the two countries and created an atmosphere unfavorable to American interests, such were, the rejection of the Convention concluded by Mr. King, the proposition in Congress of defensive measures against impressment of American seamen, and the affair of etiquette with Mr. Merry. He therefore expressed an opinion that it would take some time to reach an agreement.
On March 5 Madison informed Monroe that the treaty of 1794, so far as it related to commerce had expired on October 1, and that the commercial intercourse between the two countries was left to the regulations which the parties separately thought fit to establish. In regulating this commerce, Madison said that the United States had put Great Britain on the footing of the most favored nations but that Great Britain had not reciprocated and that the East and West India trade was not on the footing of the most favored nations. He therefore instructed Monroe to get Great Britain to restore what the treaty of 1794 had suspended and also to urge that American consuls be admitted into those dependencies of Great Britain where American commerce was admitted.

It was, of course, some weeks before these new instructions reached England. Meanwhile, on March 18, 1804, Monroe acknowledged the earlier instructions of January 5, in a letter to Madison in which he stated that he would pay special attention to the instructions and, as soon as he was sufficiently in possession of the subject, he would ask for a conference with Lord Hawkesbury to propose a convention to adjust the points and the principles of the project. He doubted whether a suitable convention could be arranged on all points but now that he had official instructions, he thought he would be more able to get redress.

In due time Monroe requested an interview with the British foreign secretary which took place April 2. In this interview he informed Lord Hawkesbury of his instructions and explained
them in detail. Hawkesbury seemed to favor the negotiation but requested Monroe to send him a copy of the project to submit to the cabinet and said that he would then communicate its attitude. He did not bind himself, but he went so far as to express a wish that the principles of the treaty of 1794 might be adopted wherever they applied.

Monroe hoped to place the United States on the same standing as the Northern powers with respect to neutral rights. The conditions were now more favorable to the United States because of late very few vessels had been interrupted in their commerce with France and Holland, and the few that had been brought in were/condemned. The ministry was still firm but there was evidence that a change was bound to come soon. If the King died a new ministry would be formed; or if the Prince came into power, as regent, the general opinion was that Mr. Fox would be brought into the ministry which would thus probably be more favorable toward the United States than that of Addington.

True to his promise, Monroe presented the project of the convention to Lord Hawkesbury on April 7, 1804. This project contained seven articles and embodied Articles I, II, III, VI, VII, VIII, and XII of the plan of the convention outlined in his instructions. After presenting the project of the convention, Monroe did not communicate with Hawkesbury on the topics it contained, but deemed it best to await the opportunity which would be furnished by his reply. Meantime little progress was made in the negotiations because of the attempt to form a new ministry. Addington has resigned on April 29, 1804, but the new ministry was not formed until about May 8. Pitt took the place of Mr.
Addington, as Prime Minister, and Lord Harrowby succeeded Lord Hawkesbury as secretary of foreign affairs. This change was not as favorable to the United States as Monroe had hoped. While the new ministry was being formed, he wrote to Madison and told him it would be well to observe a cautious policy in regard to St. Domingo so as not to offend the new ministry.

While the Addington ministry was clearly on the decline, Monroe had not pressed the negotiation. But he seized the first opportunity to take it up again with the new government. Thus, when he was received by Lord Harrowby on May 22, 1804 he mentioned all the points to him, to which Harrowby replied that he so lately come into office and had to attend to so many duties which were of the first importance to his country, that he hoped Monroe would not press him on those relating to the United States, which he presumed were not so urgent to either party. To this, Monroe replied that he had already shown that disposition in regard to the British Government and hoped that Harrowby would soon set a day to confer upon these subjects. Harrowby's manner was conciliatory, although he observed that he could give no opinion on any one point.

After waiting patiently for him to set a date for a conference, Monroe at last wrote a note asking an interview and this was granted on May 30. He asked Harrowby if he had read the project relative to seamen which had been given to Lord Hawkesbury April 7. Harrowby replied that he had not and probably could not examine it during that session of parliament. Monroe then asked him if he wanted to examine the ratification of the treaty respecting the boundaries, to which he replied that he did not have time, but would be glad to know how it was ratified. Mo-
roe explained that the treaty had been ratified with the exception of the 5th Article. Thereupon Harrowby censured the practice of the United States in ratifying parts of treaties, saying that it was "new, unauthorized, and not to be sanctioned." Replying to this Monroe called his attention to the fact that this was not the first example, seeing that the treaty of 1794 had not all been ratified and both nations had agreed to this. Harrowby asked why the treaty had not been ratified as a whole and Monroe explained that a doubt had arisen as to whether the ratification of this convention might not lay a foundation for disputes hereafter, because of the late treaty concluded with France which had added new territory to the United States. He further pointed out the fact that since neither the American minister nor the British minister at the time King's treaty was signed knew of this cession, that its boundary was not provided for in the convention, and that this in after years, might cause a great deal of trouble. Harrowby replied severely, declaring that the United States had doubtless ceded territory to England with which she did not wish to part and that therefore she was not disposed to ratify the treaty. To this charge Monroe replied that Harrowby had misconceived his idea, that he did not admit that the treaty could have any affect since it could not operate on an interest which did not exist when it was made; that the United States was only anxious to prevent a misunderstanding on the subject by previous explanation and arrangement and that by postponing the subject for the present the door was left open for the amicable negotiations and adjustments which the United States wished. Harrowby repeated again the idea that he first expressed. Monroe offered to leave the ratification with him,
but he declined it, and his purpose throughout the interview seemed to be to "wound and irritate the American Minister". He did not express a friendly sentiment toward the United States. Monroe consequently wrote to Madison and told him of the interview and warned him to look for a change of policy because England was very jealous of America's commerce. He also stated that it was rumored that England had formed a coalition with the Northern powers and if this should prove true it was likely that England would be less friendly and accommodating toward America because the United States would be left standing practically alone in the struggle for neutral rights.

However, Monroe had another interview with Lord Harrowby the following week at which time the latter expressed an entirely different attitude toward the United States. He spoke in amicable terms of the country and government and invited Monroe to dine with him. The American minister took this to be a hopeful sign of an ultimate agreement. He wrote to the Secretary of State and said, "Our commerce has never enjoyed a greater degree of freedom, and as much security from His Majesty's ships of war and cruisers as at present". From these indications Monroe came to the conclusion that Great Britain would no measure that would add America to her list of enemies.

At this juncture Monroe received a note which Madison had written him on April 15, informing him that the President thought he had better proceed to Spain, and in conjunction with Mr. Pinckney, open a negotiation on the important subjects remaining to be be adjusted with the Spanish Government. In replying to this letter Monroe explained that he feared his absence from the country would be injurious and that he would not go
While there was the least danger. He voiced his disappointment at not being able to place himself on the familiar footing that at one time he had prospects of doing, and had in some degree effected. He explained to Madison how difficult it was for a foreign minister ever to attain that situation with the British Government, and preserve the independence of his character and the neutrality of his nation. In another letter (of July 1) he stated, "There is a great difference between obtaining a treaty which trenches on their ancient usages and pretentions or what they call their maritime rights. It is very uncertain whether any treaty will be obtained or not, if it is it will more than likely apply only to seamen, tho, certainly, I shall endeavor to make it as comprehensive as possible in reference to the objects embraced in the instructions." He made it clear to Madison that he did not believe that there was likely to be any change in Great Britain's attitude toward America and that to hurry the communication would not produce the desired effect. If a high tone were used, it would be met by a corresponding one which would make things worse.

Thus matters stood until August 3, when Lord Harrowby wrote Monroe a note requesting him to call at his office. Monroe went to his office at the appointed hour, and in the course of the interview, Harrowby asked him in what light his government viewed "the treaty". He replied that it had been ratified with the exception of the 5th Article. Thereupon Harrowby explained that he did not mean the treaty of 1803 but the treaty of 1794 which by one of its stipulations was to expire two years after the signature of the preliminary or other articles of peace conclud-
ing the then existing war between Great Britain and France. He wished to know if the United States considered it as actually expired. The American minister replied in the affirmative. Whereupon, the British minister expressed his doubts and asked what the relation was between the two countries and by what rule tonnage, imposts, etc., were to be governed. Monroe replied that that he presumed that the law in each country regulated these points. Thereupon Harrowby made a proposal that the treaty of 1794 be extended until two years after the conclusion of the existing war. The American commissioner replied that he had no power to agree to such a proposal, although the President was disposed to postpone the regulation of their general commercial systems until peace was made, but that he sought, for the present, to remove certain topics which produced irritation in their intercourse, such as impressment of seamen, seizure, etc. Harrowby was not inclined to talk on these points, but added that his government might adopt the treaty of 1794 as the rule in its own concerns and in respect to duties on importations from the United States. Monroe agreed to send the proposal to his government, but at the same time he observed that America was a young nation and had had little experience when she concluded the treaty of 1794, that she never liked the treaty, and he deemed it proper to make a new one. The British commissioner excused himself from entering upon the subject. On the question of impressment, he stated that he did not believe that the American authorities could give much aid in restoring deserters, because the spirit of the people would be against it. Monroe observed that the American people were obedient to the laws in all cases, and when this stipulation should become a law, public feeling
would change, especially when they considered it as a price they must pay to save their fellow citizens from impressment by a foreign nation.

One the whole, this interview was not very encouraging to Monroe. He saw that Lord Harrowby did not wish to encourage him in believing that an agreement would be reached soon although he was equally careful not to do anything that would bring the negotiation to an end. A few days after the interview he wrote to Madison, saying, "That there is little hope of bringing the topics pending between the two nations to a close. Nevertheless, the Government is favorable to the United States, and the American commerce enjoyed a protection which is proof of the increasing respectability of the American Government and the country." Furthermore, he pointed out the fact that England had always viewed the United States as a divided country, the greater half sympathizing with Great Britain, and the lesser part with France, and that they had been very slow to correct this error, England probably foresaw that in admitting it, she gave up the party from whose reestablishment she hoped something. She admitted the virtues, wisdom, and efficiency of the republican government in foreign as well as domestic concerns, and she also admitted that the United States cultivated their friendship and merited it at a time when they most needed that attention.

On September 1, 1804, Monroe had another interview with Lord Harrowby and he urged the British Government to adopt the convention which he had proposed for the suppression of impressment.
and to ratify the convention respecting the boundaries, with the exception of the 5th Article. The British minister finally promised to submit the subject to the cabinet and give him as early an answer as possible. In examining that part of the project which dealt with impressment, Harrowby referred to some resolutions that had been offered in Congress for the protection of American seamen, and expressed regret that the question had been taken up with such earnestness by Congress. Monroe explained to him that business was not conducted in the United States as it was in Great Britain and he fully explained the American system. Harrowby spoke much of the difficulty of an arrangement on impressment from the similarity of the people and of the great numbers of their seamen known to be in the American service. The American commissioner replied that the arrangement was not proposed to be permanent but for a short time and to be experimental, that it looked to the evils on England's side as well as on the side of America.

In speaking of the Articles which defined, in certain cases, neutral rights, Harrowby observed that they only touched parts, but if the United States would adopt his proposal of considering the treaty of 1794 in force until two years after the close of the actual war, that all these parts would be provided for. Monroe replied, that in touching the subject in the points to which the articles extended and these only, the United States Government sought to put out of the way for the present, and during the war, the causes for irritation and leave the general arrangement of commerce until after the war was over. It was supposed that his government would be accommodated by it; and that
the articles proposed did not stipulate anything which the British Government had not sanctioned with other powers as its present practice. To this Harrowby objected that they omitted other articles which his government deemed very important. They next proceeded to examine the convention respecting the boundaries in the light in which the reatification by the President presented it. Monroe explained the motives of the President and the Senate in declining to ratify the fifth article. During this interview the American commissioner informed the British minister that he had been instructed to join Mr. Pinckney in Spain as Envoy Extraordinary. Harrowby asked him if this mission was to adjust the controversy between the United States and Spain respecting the boundaries of the newly acquired territory of Louisiana and he replied it was.

On September 5, Monroe sent a paper to Harrowby expressing in writing what he had explained to him in the interview of September 1 regarding the boundary convention of 1803 and stating why the United States had refused to ratify the 5th Article. Three days later he wrote to Secretary Madison explaining why he had omitted part of the articles outlined in the plan of the convention in his instructions and acquainted him with the progress of the negotiations.

Two weeks more passed and Monroe having received no answer to his last note wrote on September 25 to Jefferson and told him of the state of affairs saying that it was difficult to decide whether to hasten the negotiations or let them take a natural course, and meanwhile proceed to Spain. He seemed to be more in
favor of the latter course, stating his opinion on the situation. He expressed his belief that things would all come right with Great Britain at no remote period of time and that matters would be hastened more by a firm manly style of conciliation than by a defiant attitude. In closing this letter Monroe expressed his intention to write a note to Lord Harrowby and if the latter did not reply, to depart immediately for Spain.

In the meantime Harrowby had gone to Weymouth shortly after the interview of September 1, and did not return for some days. On September 26, he wrote to the American minister expressing his regret that he had not been able to see him since his return and invited him to dinner on the 29th. Monroe received this note the next day after he had written the above mentioned letter to Jefferson. He decided to accept the invitation and find out, if possible, whether anything new had developed, but nothing was mentioned at the dinner about the negotiation. From this he inferred that business would not be hastened and determined to go at once to Spain. He was undecided as to whether to write to the British minister and declare the negotiations at an end, or to keep matters open so as to renew the discussion at a later date. He finally decided upon the latter course and wrote Lord Harrowby a friendly note in which he stated the necessity of his going to Spain, but also expressed the hope of renewing the negotiation on his return. The British commissioner's reply breathed the same sentiment and the negotiations were suspended by mutual consent. Thereupon, Monroe notified Harrowby on October 3, that Mr. Purviance would be left in charge of affairs between the two countries. Two years had passed since he came
to England and the negotiations were no nearer an end than on the
day he came. Nevertheless, even in the face of all of this dis­
couragement Monroe did not lose faith for on the eve of his de­
parture, he wrote Madison, "The negotiation has not failed in its
greatest object.....nor was there even less cause of complaint
furnished by impressment".
Notes On Chapter II.

4. ibid, 379.
6. ibid, 36.
7. ibid, 44.
8. ibid, 44.
9. ibid, 52.
10. ibid, 61.
11. ibid, 69.
12. ibid, 93.
13. ibid, 97.
13a. ibid, 97.
14. ibid, 100.
14a. This note was founded on a report of Mr. Ewing.—
Monroe's Writings, (Ford), IV, 100.
15. Monroe's Writings, (Ford), IV, 100.
16a. idem.
17. Monroe's Writings, (Ford), IV, 134.
19. ibid, 79.--ibid, 84.
22. ibid, 154.
24. ibid, 90.
25. ibid, 91.
26. ibid, 92.
27. Madison's Writings, 141.
28. Monroe's Writings, (Ford), IV, 188.
29. ibid, 191.
30. ibid, 197 (foot note).
32. Monroe's Writings, (Ford), IV, 205.
33. ibid, 210.
34. ibid, 218.
35. ibid, 288.
36. ibid, 218.
37. ibid, 288.
38. ibid, 236.
39. ibid, 241.
40. ibid, 241.
41. Am. State Papers, For. Rel., III.
42. Monroe's Writings, (Ford), IV, 241.
43. ibid, 241.
44. ibid, 252.
The Spring of 1805 brought a change in both the political and international affairs of England affecting American interests. Lord Harrowby had been succeeded by Lord Mulgrave as Secretary of Foreign Affairs. The ministry after this change was less favorable to America and asserted the English principles to the fullest extent. The international affairs were now more favorable to England. She had at last succeeded in forming the coalition with Russia, Austria, and Sweden which she had desired for some time. With the Continental War of this coalition the pressure was withdrawn from her Southern Coast and the fear of an invasion from France dispelled. Also with the added strength of these nations as allies, Great Britain evidently felt she could take a more decided stand against the trade of America with her enemies. Consequently she began to seize American ships engaged in this trade.

It will be recalled that the origin of this policy toward neutral trade was formulated by the famous "Rule of 1756", which provided that a neutral could not in time of war engage in a trade that was denied her in time of peace. When the United States took her place as an independent nation, she was excluded from the colonial trade in which her merchants had participated in part at least prior to the Revolution. Fortunately the door was not entirely closed. By Article Thirty of the treaty of commerce with France, the United States had been given certain trade con-
concessions in the French West Indies. These were subsequently developed by arrêts of the Royal Council and by ordinances of the French Colonial Governors. Very soon a considerable trade grew up between the French West Indies and the United States which on the outbreak of the French Revolution rapidly developed into an extensive carrying trade with Europe. Great surprise was therefore caused when after the outbreak of the war with France in 1793, Great Britain ordered the seizure and detention of neutral vessels laden with French Colonial products. The Americans protested and claimed the trade was legal because it was permitted in time of peace. This order was revoked by the Order of January 8, 1794, which tacitly recognized the indirect trade. The new instructions ordered the seizure only of such vessels as were bound directly from the French West Indies to an European port. England still further relaxed her principle by the Dutch Property Acts in 1795. By the means of these acts, England made herself the emporium of the world's commerce. Indeed, the Board of Trade, minutes show that they were passed chiefly for the purpose of encouraging importations from America of West India products. To these was added three years later the relaxing Order of January 1798 which extended the privileges granted to the United States to the neutral powers of Europe.

The Americans found their situation particularly fortunate for their trade. Their ships from the West Indies could, without serious loss of time or money, touch at a port of the United States, pay the import duty on their cargoes, land the goods and reship the cargoes for the European continent. By thus breaking
the voyage it was agreed that the goods were made neutral and the second part of the voyage was on the same basis as if the cargo were purely American in origin. For a time this view was not disputed by England, for when a number of vessels engaged in the trade were seized and brought before the admiralty courts, the advocate general declared that landing the goods and paying the duties in a neutral country broke the continuity of the voyage and thus legalized the trade. Decisions in several cases, notably that of the "Polly", tended to confirm this opinion. On the other hand, the advocate general also argued — and this has been generally over-looked — that, participation by a neutral in the direct trade between the mother country and its colonies has not, during the present war, been recognized as legal, either by his Majesty's Government or by his tribunals.

In 1802 the "Mercury" was condemned for attempting to carry on a trade between Havana and Spain by way of Charleston. They held that touching at a neutral port, etc., could not legalize the voyage. Despite the uncertainties of the situation, however, the American carrying tonnage increased from 447,079 tons in 1793 to 922,298 in 1805. Thus matters developed until in 1805 the English shippers developed an open hostility toward the American carrying trade. The English Government, too, had real apprehension for the continued superiority of the navy, for this trade drew many British seamen to America because they were better treated and received higher wages. Also, not only were planters and merchants of the British West Indies suffering from com-
petition with the French and Spanish West Indies whose produce was carried to neutral and even hostile countries in Europe, but the prices were thereby depressed and the British colonial products were unable to find a sufficient market.

As England had never really conceded the principle of the broken voyage, the legality of the trade was a question which would have to be decided sooner or later by the courts. This decision was rendered in the "Essex" case in May of 1805. This vessel was bound from Barcelona in Spain to Salem, Mass. and thence to Havana, Cuba. Both the ship and cargo were condemned, the court declaring that the cargo had never been intended for the markets of the United States. The case of the "Essex" first came up in 1803 but the decision was not rendered until 1805. It is usually said that Sir William Scott reversed his previous rulings but this is not true because he had not rendered the decision in the case of the "Essex", this case having been tried before the Lords Commissioners of Appeal in Prize cases, where the judgment was pronounced by the Master of the Rolls, Sir William Grant.

Thus the new policy that Great Britain adopted toward the United States was really a reassertion of the Rule of 1756 with the interpretation that touching at a neutral port did not change the character of the goods. The feeling in England was very bitter against the American trade and is best reflected in James Stephen's pamphlet, "War in Disguise; or the Fraud of the Neutral Flags", published in 1805. Stephen was very much opposed to the carrying trade of the United States and believed in the strict enforcement of the Navigation Acts. He assumed that the "Rule of
1756" was a settled principle of law and therefore argued that the greater part of the neutral trade, being contrary to this rule, was not neutral at all but was a fraudulent business, in which the belligerent's property was protected by the American, or other neutral, flags.

Stephen treated his subject under five points, (1) the Nature of the Evil of Neutral Trade, (2) the Extent of the evil, (3) the effect of Neutral Trade, (4) the remedy and the right of applying it, (5) the prudence of the remedy.

Under the first point, he reviewed the English policy and the French habit of throwing open her ports to neutrals as soon as war was declared. Furthermore, he showed how the neutrals carried on the French trade and left France free to carry on the war without worrying about her colonies. Taking up the next point he discussed the extent of the trade and the frauds that the neutrals practiced in evading the laws. The effect of the neutral trade was treated under the third point. Stephen explained by this trade France, Spain and Holland no longer engaged in commerce except coastwise trade and all their produce and imports were carried in neutral vessels. He attempted to show that these countries could receive their supplies cheaper than England because they did not have to employ convoys. Under the two last divisions of his treatise (the Remedy and the right and prudence of applying it) he advocated the enforcement of the "Rule of 1756" and as the only remedy, the Navigation acts. In justifying this enforcement, he claimed Great Britain had the right because the United States had not remained
strictly neutral and much of the trade was fraudulent. In arguing for this remedy he stated that he believed America would stand by England because she stood more for civil liberty which the United States loved. He also argued that America would not enter the war because it would stain her honor and retard her commercial growth. He asserted that America would be afraid to be hostile for too much of her commerce was exposed and this would cut off her revenue.

How far these charges were true is difficult to state and the verdict of historians is not unanimous. The English public stood ready to accept Stephen's conclusions and therefore a conviction was established in England that the American carrying trade was fraudulent and would soon bring Great Britain to ruin, also that the Americans were carrying on this trade to rescue France and Spain from the pressure of the British navy.

So serious was the effect of "War in Disguise" that Secretary of State Madison at once wrote an anonymous answer to it entitled "An Examination of the British Doctrine which Subjects to Capture, a Neutral Trade not Open in Time of Peace". In this pamphlet Madison pointed out that all authorities on international law had never recognized this principle and he gave examples of treaties to which Great Britain was a party and also treaties between other countries which recognized the rights of neutrals to trade with enemies' colonies. His argument was very clear and strong but failed to produce the
effect of "War in Disguise".

Stephen in his pamphlet expressed the bitterness felt by the British merchants, the West India planters and to a certain extent by the people of England. In this way, he paved the way for the enforcement of the "Rule of 1756". For, as we see a little later, Fox's blockade of May 1806 embodied certain principles of "War in Disguise". These effects plus the sentiment of some Americans are still more evident in the Order in Council of January 7, 1807.

While Monroe was still in Spain, Madison sent him copies of certain acts and resolutions that had been brought up in Congress, calling his attention to their importance. One of these was on impressment and another on the arming of private vessels. These papers were significant because they showed the spirit of America was becoming aroused, and how seriously she viewed the conduct of Great Britain.

Feeling that under the circumstances he should be in England, Monroe returned on July 23, 1805. He found on his arrival that Lord Mulgrave had succeeded Lord Harrowly as Foreign Secretary and saw evidence of the new policy that had been adopted toward American commerce. Before his visit to Spain very few American vessels had been seized and condemned. But on the very day of his arrival in England, the Court of Admiralty condemned the "Enoch" under circumstances very similar to those in the case of the "Essex". Nor was this all, for just previous to Monroe's return twenty or thirty American vessels had been brought in and condemned, although they had landed
their cargoes in America and paid duty on them according to the previously recognized practice.

Monroe wrote to Lord Mulgrave on July 31, and requested an interview upon the topics which were pending between the two countries before his departure for Spain. Mulgrave replied on August 5, that he would appoint a day the next week for a meeting and that in the meantime he wished to inform himself on the state of the business. Before the interview could occur, however, the situation was complicated by the new issues. Thus on August 8th, Monroe again wrote to Lord Mulgrave in order to call his attention to the late seizures of American vessels and to the fact that his government expected information regarding the change of policy. Moreover, he pointed out that the vessels had been seized and condemned on principles denied by the law of nations and that in many instances vessels had been brought in under orders equally unknown to the parties that were affected by them and to the Representative of the United States accredited with his Majesty. He stated that it would have been agreeable to postpone this inquiry until the 31st, the date which Mulgrave had set for their interview, but that the importance of the subject made it necessary for him to have information at once to transmit to his government. Mulgrave replied the next day that he did not understand Monroe's note and professed ignorance of any recent change of policy that was of such a nature as to require an explanation previous to the day set for an interview. To this Monroe replied on August 12th, explaining specifically the nature of the complaint contained
in his note of August 8th. On the same day, Mulgrave wrote to the American minister and asked him to come to his office on Thursday the 15th at two o'clock.

This meeting took place at the time appointed and the British minister gave Monroe a report from each of the King's law officers in the Admiralty respecting the late seizures. He assured Monroe that his Government did not wish to take an unfriendly attitude toward the United States and was willing to do everything in its power to make satisfactory arrangements. He also promised the American minister another interview on the other topics as soon as he had perused the reports. The next day, Monroe returned the documents stating that he was very sorry they contained no satisfactory explanation of the grounds of the complaint of the United States. Consequently, on August 19th, according to his promise, Mulgrave had another interview with Monroe on the seizure of American vessels. The outcome of this interview was far from favorable to the United States. For Lord Mulgrave asserted to its fullest extent the principle that a neutral power had no right to commercial relations with colonies of an enemy in time of war which it did not have in time of peace, and that all the extensions of this principle had been simply concessions of Great Britain and not due to the neutral powers as rights. Monroe denied this statement and replied that Great Britain did not have any more power to do this in time of war than in time of peace. He then asked upon what footing Mulgrave was willing to place the trade. His answer merely expressed what he had said before and showed no disposition to relax the principle. Monroe next asked whether he should
consider the sentiments which he expressed as the answer of his
government to his letter of August 8th. Mulgrave replied he
should not, and said he was sorry that they could not agree but
that he would report to the cabinet and then give him an answer
to report to his government.

After waiting several weeks for the official answer from
Lord Mulgrave, Monroe finally decided to write him a note on
September 23rd, expressing his disappointment at not receiving
information which he could transmit to his government. On the
subject of seizure, Monroe cited the definition of the laws of
nations as to what constituted a legal seizure, and pointed out
that the vessels condemned did not come under this law. These
vessels he maintained did not break a blockade nor carry contra-
band of war but in every case had landed their cargo and had
paid the duty, thus breaking the continuity of the voyage. He
declared that British contention was new and not recognized by
the law of nations and that even Great Britain had not adhered
to it consistently, for by the Orders in Council of January 8,
1794, and January 23, 1798, she had relaxed this principle. Also
the decisions of the Courts of Admiralty and the treaty with
Russia of June 17, 1801 (Sec.2, art. 3) sanctioned neutral trade
with the colonies of enemies if the voyage was not direct. He
closed this argument by repeating that Great Britain had no
right to assert such a principle as she was claiming.

Two days after sending this note to Mulgrave, Monroe
wrote to Madison and communicated the progress of the negotiations.
In the course of the explanation, Monroe said, "His lordship has
endeavored to manage this business without writing from a desire, which is very apparent, to get rid of it without any compromitment." In closing the letter he gave his opinion that nothing could be done soon, that England was waiting to see if the new combination with Russia and Austria would be successful against France, and in the meantime, was trying to tranquillize the United States by dismissing her vessels.

Moreover, Monroe stated that if anything could be done toward an arrangement of the affairs it would probably be done in a week or ten days, otherwise, it probably would not be arranged during the approaching winter.

In a letter to Jefferson on October 6th, Monroe further said, "It is very easy to understand the conduct of this government or rather its policy in regard to the United States. Since the war she has suffered our commerce to go free until she could form a coalition with Russia and Sweden. She thinks they are so completely embarked in the war against France that they cannot attend to this object much less give us aid, and now that those powers can give little support to the United States, she has seized the moment and is intending to press her principles to the greatest possible extent against us. By placing Prussia upon the same ground with the United States, she might hereafter contend with some plausibility that any concession which was obtained by the United States or tolerated by the United States was also binding on the northern powers."

In this same letter, Monroe reviewed in detail his interviews with Lord Mulgrave to show Jefferson just how the
business stood. He expressed a desire to return to the United States, but stated he deemed it advisable to remain for the present so the British government would be deprived of any pretext for declining an arrangement of affairs. To this letter, he added two postscripts. In one on October 24th, he said that intelligence had been received that the French had gained an important advantage over the Austrians on the Danube (Battle of Ulm, Oct. 20th). In another, on November 17th, he said "There is no predicting what course our affairs may ultimately take here especially if Prussia becomes a party to the war on the side of the allies". (It will be recalled from our study of history that England tried very hard to get Prussia to join the third coalition and it was to this Monroe referred.)

Meanwhile, in another letter of October 18th, to the Secretary of State, Monroe stated there was no prospect of an arrangement, and he was of the opinion that Great Britain wished to postpone an agreement indefinitely because she was jealous of American prosperity and was probably using the late seizures as an experiment to see how much the United States would bear. If, however, this subject failed he believed it would be easy to adjust affairs and therefore the only thing for America to do was to stand firm. Also he wrote to Jefferson, on November 1st, and advised that an act be passed to protect American commerce from the renewal of British aggressions and at the same time prevent France and other powers from following England's example. Monroe reasoned that this would be a mild way of acting on the part of the United States
but at the same time would give England and France to understand that America would stand up for her rights.

It was just at this critical stage in the negotiations that British public opinion and Anglo-American relations were most unfortunately influenced by the appearance in London of Stephen's "War in Disguise" which created a great deal of popular interest as we have already seen, and caused some delay in the negotiations.

Meanwhile, Monroe waited patiently for an answer to his official notes of August 12th and September 23rd. He had almost given up any expectation that Great Britain would take up the business again, when on November 25th, he received a note from Lord Mulgrave that revived his hope. In this note, Mulgrave informed him that he had transmitted his notes of August 12th and September 23rd to the cabinet and hoped to be able to give him an answer soon.

In December, Monroe took his family to Cheltenham hoping that the change would benefit Mrs. Monroe, who was in very poor health. While there, he received information to the effect that, if he would make application, the British Government would suspend their seizures until the principles at issue could be adjusted. Monroe did not have much faith in this suggestion but thought it best to go to London and see if anything had occurred lately to invite such an application. Upon his arrival there, he found no indication of a favorable opening. In fact, when he called to see Lord Mulgrave, he was informed by his secretary that he was out of town, hence Monroe returned
to Cheltenham with very little more information than he had before.

While the question of seizures occupied nearly the whole of the negotiations between Monroe and Mulgrave, nevertheless, certain other points in the dispute were sometimes touched upon. Thus Monroe could not refrain from mentioning the subject of impressment in his note of September 23rd. He pointed out the fact that the United States had repeatedly remonstrated (without receiving any redress) against the indignities which she had suffered on this score. Acknowledging the similarity of persons, manners, and language between the Britishers and Americans, he agreed that the question was a delicate one and stated he was willing to do anything he could to make a satisfactory arrangement, for meeting the problems. In October, he wrote to Madison and stated that no disposition had been shown to prescribe by treaty any restraint on the impressment of seamen. He further stated to Madison that nothing had been said on the subject of the boundary nor did there seem to be any inclination on Mulgrave's part to enter upon the subject. Thus matters rested.

In January 1806, Monroe wrote to Madison and advised him if an act against British aggression as suggested in his despatch of November 1st had not already been passed, to wait until he (Monroe) received the answer from his notes which Mulgrave had transmitted to the cabinet. He saw, moreover, that because of Pitts' death there was soon to be a change in
the ministry and he thought it best to put off this legislation in order to see what the new ministry would do. Later in the month, he informed Madison of the change of the ministry by which Lord Grenville became Prime Minister and Mr. Fox succeeded Mulgrave as Secretary of Foreign Affairs.

As soon as Mr. Fox took possession of his office, he requested an interview with the foreign ministers. He received Monroe with kindness and listened with attention to what he had to say. Fox asked Monroe whether he had made any proposition with regard to the seizures, whereupon the American Minister gave a short sketch of the previous negotiations. Throughout the interview, Mr. Fox was very attentive and expressed a hope that an agreement would soon be reached. Monroe was greatly encouraged over the favorable prospects and on February 25th, presented Fox a note on the topics in dispute, viz., the regulation of trade with foreign countries and colonies, the rights of American seamen, and the unsettled boundaries.

On the 28th, Monroe had another interview with Fox in the course of which he complained of the continued condemnation of American ships. Mr. Fox assured him that the late decisions were not to be considered as an evidence of the disposition of the New Ministry, and that during the Easter holidays, he would make a full examination of the subject and meet him again soon. In communicating the results of this interview to Madison, however, Monroe made it clear that too much reliance could not be placed on favorable appearances. He advised that congress should not separate without taking some
measure to protect American commerce because failure to take such a measure would probably cause the British government to delay in settling affairs.

On March 31st, the American Minister made a formal application for an order to suspend the seizure and condemnation of American vessels. He had delayed in making this application because he hoped the business would soon end and in view of this thought such an order might give cause for further delay, but as affairs were no nearer a settlement than when he came to England, he decided to make the application.

At length on April 18th, Fox wrote Monroe a note appointing the next day for an interview. Later in the same day, the American minister met him in the Queen's drawing room, and Fox took him aside and announced that he was ready to begin a negotiation and pursue it without delay till it should be concluded. He said that no trouble need be feared about colonial trade, but there would be objections to making payment for property already taken. Meanwhile, the seizures and condemnations were to be stopped.

The following day, Monroe met Fox as he had requested in his note of April 18th. The ministers discussed the topics pending between their governments with respect to the American claims for indemnity. Fox said little but he expressed a desire to take up the subject of commerce generally, more especially with respect to the West Indies, a matter which he thought ought to be arranged at this time. Fox sought to settle this matter because there were constant protests coming from the
West Indies merchants and planters against the trade carried on by the Americans. Monroe expressed his willingness to meet him on the general subject, or any part of it on which they could agree. Fox agreed to write Monroe a letter in answer to those written to Lord Mulgrave and express therein the views of his government. After waiting a week without receiving the promised communication, Monroe called on Fox on the 25th. After a few remarks on other topics, the British Minister asked "What is the minimum of your government's demands respecting seizures? Could we not agree in some modification of our pretentions, some compromise? For example, to adopt some plan that might answer our object without compromitting the British Government". Monroe perceived that he alluded principally to the American claim for indemnity. He observed "that if the principle was admitted to be with the United States, the indemnity follows of course". Fox then asked, "Cannot we agree to suspend our rights and leave you, in a satisfactory mode, the enjoyment of the trade? In that case nothing would be said about the principle and there would be no claim to an indemnity". Monroe replied that he could not agree to such an adjustment, that the right was unquestionably with the United States; the injury had been severe and unprovoked and that she could not abandon her claim. Fox showed no disposition to yield and thus the interview ended without any agreement.

While these discussions were in progress between Monroe and Fox, the United States Government had taken definite steps to bring the dispute to an issue by commercial restrictions. The remonstrances from the mercantile community, against the
seizures under the new ruling as to direct trade were too numerous and emphatic, to be disregarded. Congress, therefore, before its adjournment of April 23, 1806, passed a law shutting the American market, after the following November 15th, against certain articles of British manufacture, unless equitable arrangements between the two countries should be previously reached. This bill was introduced into the House of Representatives on January 29th by Mr. Gregg and debated until April 18th, when it was passed by both Houses.

During the course of debates on this act, John Randolph made a stirring speech in which he contended that a rupture with Great Britain must be avoided by the United States. He also ridiculed the conduct of those who would quarrel with England over maritime rights and at the same time give bribes to Spain, the tool of France, after great outrages had been committed against the United States. He maintained that the cry of war was raised by merchants of the seaport towns, who could not be said to belong to America and whose dealings were not always honest. He also praised "War in Disguise" and declared it had expressed the truth in regard to the fraudulent shipping of enemy's goods.

Three days later, Samuel Smith, a member of the House of Representatives, gave a strong argument against "War in Disguise". He said, "The conduct of the British Government was not approved by the English people and it had been reprobated in England in terms so strong and language so just and proper that it probably alarmed the government and as a result "War in Disguise" was
He explained that the book was aimed to deceive the people of England, being written in such a style that they were hurried along and did not have time to notice the mis-statements. He then proceeded to point out the errors and show how they were gross misrepresentations of the facts.

As soon as Randolph's speech reached England, Stephen published it with an introduction, in which he commented on the style of the speech and endeavored to make it appear that it expressed the general sentiment of the American people, although in reality the American public was chiefly against Randolph. This speech and the discussion of the non-importation act created a great deal of excitement in England where the West India planters and merchants were already protesting against the condition of their trade. In issuing the pamphlet containing Randolph's speech, Stephen urged new restrictions against this trade. This suggestion came at a significant time when England was meditating measures in retaliation for Napoleon's treatment of her trade with the continent. Already the occupation of Hanover by Prussia, and the closing of the ports of Hamburg and Bremen to England as required by the treaty with France caused England to issue a blockade order of April 8th.

Now on May 16th, a few days after the appearance of Stephen's pamphlet, a new order was issued strikingly in line with his ideas. This order declared a blockade of the coast of the continent from the German river Ems to the Great French Naval arsenal at Brest, although for the time being, the blockade would be effective only between Havre and Ostend.
Interminable disputes were to arise in the course of the next few years over the legality of this measure which became known as Fox's Blockade. America had always contested the legality of a paper blockade as emphatically as she had contested the "Rule of 1756". Moreover, although this measure was only intended to be a temporary expedient pending negotiations, nevertheless, the conditions were such that six years later Fox's blockade became one of the chief pretexts for war between the two countries.

Three months had now passed since the new ministry took office, yet nothing had been done to satisfy the United States. The reason was well known. Fox was obliged to overcome many difficulties both in the cabinet and out of it. To increase his difficulties, news began to arrive of the debates in Congress on the non-importation act. The English people honestly believed the Americans to be cheating them in the colonial trade and two thirds of the people interpreted this act as a threat that if England did not surrender her commerce to America, she would be forced to surrender her liberties to France. Fox struggled against this opposition but was only able to get half measures that were as objectionable to the United States as was the Rule of 1756.

Two weeks more elapsed and still Monroe made no progress. Then early in May, news arrived of the passage of the non-importation act and this increased the difficulty of obtaining favors. The British minister seemed less and less willing to concede principles and thus matters stood until
May 31, 1806 when news arrived from America that Monroe's powers were superseded by the appointment of a special mission in which he was to be associated with William Pinkney of Maryland. The appointment of another commissioner was a blow to Monroe's pride and it shook his faith in the friendship of Jefferson and Madison. He knew he had lost influence at home and that Jefferson no longer depended upon him. This of course affected the zeal of his negotiation. Fox also was glad of anything that would delay the negotiation and he seized upon the appointment of Pinkney for a delay. Thus the negotiations were at a standstill awaiting the arrival of Mr. Pinkney.
NOTES TO CHAPTER III.

2. Lingelbach, England and Neutral trade, 155.
4. England and Neutral trade, 156. Lingelbach.
5. ibid, 157
6. ibid, 158
7. ibid, 160
9. ibid, 103
10. ibid, 104
11. ibid, 104
12. ibid, 104
13. ibid, 103
14. ibid, 105
15. ibid, 105
16. Monroe's writings (Ford), IV, 315:
19. ibid, 348.
22. ibid, 315.
23. ibid, 356
24. ibid, 391.
25. ibid, 409.

For other evidence as to the actual attitude of the ministry at this time, see Correspondence of Lord Auckland, IV, 276, 278.

26. ibid, 418.
27a. ibid, 105.
28. ibid, 116
29. ibid, 116.
30. ibid, 117.
31. ibid, 117.
34. ibid
CHAPTER IV.

THE JOINT NEGOTIATION OF THE TREATY OF 1806.

As a result of the deadlock in Anglo American affairs in the winter of 1805-6 and the apparent failure of the pending negotiations, Jefferson decided to appoint another envoy to England who should act with Monroe in obtaining a treaty to take the place of the Jay treaty, certain portions of which the Administration held had expired. For this object he sent William Pinckney, Attorney General of Maryland, a man well fitted for his task in view of his previous acquaintance with Anglo-American issues, as a commissioner under Article VII of the treaty of 1794.

It became apparent even before the arrival of Pinckney that there were four factors that were going to affect the negotiation with America, (1) the political situation in England, (2) certain commercial influences and legislation, and (3), the international situation.

It will be recalled from the previous chapter that Lord Grenville had become Prime Minister and Mr. Fox had succeeded Lord Mulgrave as Secretary of Foreign Affairs in January, 1806. This change proved a happy one for the United States. The new ministry took a great interest in American affairs, for it was known all along that Fox was very friendly toward the United States and that he exerted a great influence over Lord Grenville. But unhappily Fox only lived a few months after coming into the ministry. He died on September 13, and was succeeded by Lord
Howick, who was a very able man and a staunch friend of Fox, but who was unable to exert the influence in the cabinet that Fox had exerted. Moreover, not the least unfortunate consequence of Fox's death for the Ministry was a more decided exercise of Lord Buckingham's influence over his brother, Lord Grenville, an influence which the deceased statesman's authority had held in check. The marquis had never been satisfied with what he considered the inadequate representation in the coalition government of of the Grenville element which stood for continuance of the war with France and the existing order at home. He now became urgent with the Prime Minister to make the conservative interest in the Administration predominate. Also, from this time on there seems to be a change in the attitude of Great Britain toward America, part of which is probably due to the change caused by Fox's death, although the desire on the part of Great Britain to participate in the vastly extended trade of America was a second adverse influence.

The question of commercial regulation was being agitated both in Great Britain and America. The British West Indies merchants and planters were demanding that some measure be taken in order that they might have a market for their products. Their warehouses were full of sugar and other tropical products, as England was already overstocked and the usual outlets were closed. In view of these demands, England sought by the American Intercourse act and the Order in Council to give relief to these merchants and promote her trade. In doing so she had to take the narrowest interpretation of International law, and the concessions she extended to America were beneficial to her own
interests. However at the same time the American merchants were also demanding that their government take measures to prevent their commerce being restricted by Great Britain. They had built up an extended trade with the French and Spanish West Indies, and to justify their contentions, a broad interpretation of International law was taken. These two diverse interpretations not only the legislation, were bound to affect both countries, but also the negotiation.

In taking up the commercial factors, we shall first consider the American non-importation act. We find its origin in the remonstrances from the mercantile communities against the seizures under the new rulings made by Great Britain in regard to direct trade. Another object of this act was to bring the negotiation in England to an issue by commercial restriction. The bill was introduced in the House by Mr. Gregg on January 29, and was debated until April 18, when it passed both houses and became a law. It provided that after the following November 15, the American market would be shut against certain articles of British manufacture, unless equitable arrangements between the two countries should have been reached previously. This measure was initiated before the news of Pitt's death, and the accession of a more friendly ministry; but, having been already recommended in the committee, it was not thought expedient to recede in consequence of the change. It will be recalled also that Monroe warned Madison when he notified him of the change in the Ministry that too much confidence could not be put in this friendly attitude of the government. News of this act reached England in March, although the act was not officially communicated un-
til September 4. Quite a sensation was produced by the news for two-thirds of the British people considered the act a threat that they must either surrender their commerce to the Americans, or their liberties to France, and of course, the British Government had to take account of public opinion.

While the non-intercourse act was being debated in America a bill was introduced in the House of Commons to allow a limited intercourse in provisions, lumber, etc., between the British West Indies and the United States. This bill after much opposition was passed by Parliament in July of 1806. It did not prove as effective as had been hoped and an order in council regulating this trade was later drafted upon the basis of this act. It is interesting to note that the two laws, which were being debated at the same time, were direct opposites, in purpose and spirit. The American bill was seeking to restrict the English trade with her, while the British bill was trying by concessions to extend American trade with her West India colonies. Here it seems to me is proof, that Great Britain was trying to do the right thing by America. She knew of the non-importation act and its nature but still she was willing to grant concessions. For, if she had been as stubborn and dogmatic in her principles as we have always been led to believe, why would she have passed this bill when America was seeking to restrict the British trade? As we follow the negotiation through the year of 1806, we will see the effect of these acts.

The last factor that influenced the negotiation was the international situation. Early in the spring of 1806 a sudden change came over the political outlook. Great Britain found
herself at war with Prussia and negotiating with France. The
Austrians had been defeated by Napoleon at the battle of Aus-
terlitz on December 2, 1805 and as a result, the treaty of Press-
burg had been concluded December 26. This treaty which ended
the Third Coalition was a severe blow to England because she was
now left standing practically alone against France. Moreover,
this was not all, for the American affairs were still unsettled
and the United States had become urgent in her demands for an
adjustment, and after the battle of Austerlitz, Prussia conclud-
ed a treaty of alliance with France on December 15. On top of
all this came the death of Pitt and the formation of a new min-
istry. Moreover, when Frederick William III sought to secure
a modification of the treaty of Schönbram Napoleon refused, and
a new treaty was signed on February 15, in which harder terms
for Prussia were imposed. By it she was forced to occupy Hanover
and take over the German ports of Hamburg and Bremen. To the
closure of the Northern ports against British commerce, Fox re-
plied by his Order in Council of April 8, and a formal declaration
of war against Prussia.

In February, also, a proposal for the assassination and over-
throw of Napoleon made by a foreigner to Fox and promptly com-
municated by the latter to Talleyrand, opened a way for corres-
pondence of a pacific tendency between the two ministers. Noth-
ing came of this correspondence at this time, but it was later
revived in June when Talleyrand sent Lord Yarmouth, who had been
held a prisoner in France since 1803, on a secret mission to Fox.
Yarmouth brought an offer from the French to the British Govern-
ment to negotiate for peace on the basis of (1) restoration of
Hanover to George III, (2) retention of Sicily by Ferdinand IV, and (3) "uti possidetis; or, keep what you have got, for Great Britain". At least, so both Fox and Grenville understood the message, but there was a disagreement of views on the last point. This was the state of the negotiation when there also arrived in Paris a Russian commissioner, D'Oubril, who had been sent by Alexander to see if peace could not be arranged between Russia, England and France. In July the Russian envoy signed a separate treaty between France and Russia. This information was communicated to England, and Yarmouth intimated that he might depart his instructions and also conclude a treaty. The British Government at once appealed to Alexander to repudiate the treaty. At the same time a despatch was sent to Yarmouth censuring him for disobeying his instructions and forbidding him to make any more concessions without the concurrence of Lord Lauderdale, who was about to join him in Paris. When Lord Lauderdale arrived, he was not well received by the French Government. He had only been in Paris a few days before he came to the conclusion that Talleyrand and Yarmouth were acting in corrupt concert. He communicated this to his government and Yarmouth was recalled. Lauderdale continued the negotiation but was unsuccessful. In September the Czar disavowed the D'Oubril treaty and Napoleon saw a possibility of a new coalition. He resolved to crush Prussia as he had Austria and to disable the Czar from interfering further in the affairs of Western Europe. When the Prussians demanded the withdrawal of the French troops from North German territory, Napoleon informed them they would be withdrawn when the Prussian army was dis-
Prussia then resolved to make a stand for her rights, but instead of waiting for the Russian aid which might have saved her, she plunged into the war. On October 13 the armies met at Jena and Napoleon completely defeated the Prussians. Thus another nation was crushed and Napoleon now seemed destined to rule the continent. This news made England feel she must do everything she could to prevent French domination of all Europe. This seemed to bring a change of attitude toward American affairs also. While the trend of affairs in France was toward a general peace, Great Britain seemed to be favorable to the treaty with America but after the change on the continent, England knew she must use her sea power to keep down French domination and this meant strict trade regulations which were bound to conflict with American interests and principles.

The discussion of these four factors thus pictures the situation under which the negotiation of 1806 took place. The instructions for Pinckney and Monroe began by explaining the non-importation act and this preamble was followed by three absolute stipulations as to the proposed treaty, (1) that the rights of American seamen should be respected by Great Britain, (2) that the trading rights of the United States with the colonies of Great Britain's enemies should be recognized and defined, and (3) that trade between the United States and the British Empire should be satisfactorily regulated. It will be remembered that these three issues had extended down from colonial times, but at this time we find a reversal of the order of their importance. In the previous negotiations the impressment of American seamen was considered as the least important of the three,
whereas in this negotiation it takes the leading part. The President stipulated that the British Government must adjust these three points, otherwise no treaty could be made but the non-importation act should be enforced. "For", declared the instructions, "so indispensable is some adequate provision for these questions, 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 the President authorized the negotiations, in case the demand referred to in the article should not be acceptable to the British Government to substitute one in the following terms. "No seamen nor seafaring persons 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 or the other party, 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 due observation of this order".

With respect to contraband, which was the subject of the fourth article of the treaty project, naval stores were excluded and the list was limited to articles strictly military. Madison thought it would not be unreasonable to substitute in place of this article an entire abolition of contraband but if this was not possible an improvement could be made by a negative specification of certain articles such as provision, money, naval stores, etc. The 4th Article also related to two other subjects, (1) the doctrine that "free ships make free goods", (2) the right
of trade with enemy colonies. In regard to the latter the most
the United States would concede was that the landing of goods
and the payment of duties was sufficient evidence of a 
importation into the United States. The commissioners were to
urge, moreover, that a distinction be made between the West
Indies colonies and the East Indies and to urge also the reason-
ableness of a direct trade with the former.

The 6th Article instructed the commissioners to secure some
remedy for the English contention that a notification of a block-
ade and even of an intended blockade to a foreign government, or
its minister at London, was sufficient notice to its citizens,
thus rendering any vessel liable to capture which should be found
with a destination to the port thus notified as blockaded. Some
provision was to be secured against the insults and injuries com-
mittcd by the British cruisers in the vicinity of American shores
and harbors, and also, in this connection an extension of the
marine jurisdiction from three to five miles was to be sought.
Other requests to be made upon Fox relating to points in dispute
were concerning discriminating duties, trade with Nova Scotia, etc

It will be noted that the three points (1) the rights of
American seamen, (2) the recognition of American neutral trade
with Britain's enemies and enemies' colonies, and (3) the re-
gulation of trade between the United States and Great Britain
were fixed as conditions which no treaty could receive the Pres-
ident's assent or procure a repeal of the non importa tion act.
The other questions were matters of bargain and the commissi-
ers could to some extent use their discretion in dealing with
them. But in their bargaining the American commissioners were
under the serious handicap that whereas every demand made by the United States required a corresponding concession from England. Nevertheless, no equivalent could be furnished by the American negotiators except the repeal of the non-importation act.

Mr. Pinckney arrived in Liverpool on June 21 and Monroe immediately notified Mr. Fox of his arrival and requested that he send an order so that his baggage might be landed and brought to London. This request was complied with at once and Pinckney arrived in London on the 24th. The next day Monroe informed Mr. Fox thereof, and asked him to appoint a day so they could deliver their joint letter of credence.

Unhappily on the very day of Pinckney's arrival, Fox fell ill. His complaint was soon known to be dropsical and his recovery hopeless. On June 27, Sir Francis Vincent informed the American commissioners of Mr. Fox's illness and matters rested until the 15th of July when the American commissioners received a note from Mr. Fox requesting that they meet him at three o'clock, and on the same day they received a letter from Sir Francis Vincent informing them that they would be presented to the King on Monday, July 21. On the day set for the presentation of the American commissioners, Lord Spencer, Secretary of State Home Department informed them that Mr. Fox would not be able to present them to the King but that he would introduce them instead, and they were to be at the Queen's House at two o'clock, or if they preferred, they could meet him at his office at Whitehall at one o'clock and all proceed together. The American commissioners met Lord Spencer at his office at one o'clock and were introduced to the King at two. The re-
ception was quite favorable, the King expressing himself as highly satisfied with the proof which that measure gave of the disposition in their government to adjust matters, and stated his pleasure that Mr. Pinckney had been selected by the President from among their citizens to be employed in it. The King's other remarks, though not applicable to the topics of existing difference, were of a friendly character.

Following their presentation, the American ministers in order to open actual negotiations intimated to Sir Francis Vincent that they were anxious to see one of his Majesty's ministers. Vincent communicated this desire to Lord Grenville and notified the American commissioner that he had done so. On August 2, Monroe wrote to Lord Grenville and requested an interview. Lord Grenville appointed Monday, the 4th, for the interview, at which time he received the American ministers very cordially. Although he was not prepared to enter upon the discussion of their mission, he stated that the British Government was very desirous of giving prompt and effectual attention to what the American ministers had to propose and of adjusting satisfactorily whatever was in any degree calculated to disturb the good understanding between the two countries. On the subject of impressment he suggested doubts of the practicability of dividing means of discrimination between the seamen of the two countries within their respective jurisdictions, and he spoke of the importance for the safety of Great Britain, in the then state of affairs, of preserving in their utmost strength the right and capacity of the Government to avail itself in war of the services of its seamen. The American commissioners presented a brief sketch of the views of
the United States relative to the belligerent proceedings in the vicinity of their coasts and harbors. Lord Grenville replied that there could be no objection their part to a suitable provision on the extent of the marine jurisdiction. To what was suggested by the American commissioners on the subject of contraband, Grenville replied that he and Jay had copied the enumeration in their treaty from the British treaty with Sweden and it was the same as was granted to other nations.

After this interview affairs were at a standstill and as Fox's health did not improve the American commissioners became very anxious to begin the negotiation. On August 8, 1806, Lord Grenville wrote to Lord Auckland, "The two American commissioners, Monroe and Pinckney, are very pressing that their negotiation should be entered upon; and, indeed I do not think it at all desirable that the thing should be longer delayed. It is, however, quite impossible that Mr. Fox should just now enter into these discussions, nor is it more possible that they should be carried on by any of our colleagues who are all quite new to the business, or by myself, who, God knows, have more than enough on my shoulders already. I therefore suggested on Wednesday to the King, the idea, which he approved of, authorizing two persons by special commission to treat on this business; and I have proposed to Lord Holland to undertake it with you, which he is ready to do, if you have no objection.... ...

If you will only authorize me to direct that your acceptance should be signified to these two Americans, the preparation of the commission and instructions may then take a little time before the expiration of which I may hope to be able to
converse with you on the whole subject".

Lord Auckland sent his acceptance the same day and in closing his note said, "So far, therefore, as I am concerned any communication may be made to Messieurs Pinkney and Monroe as immediately as may be thought expedient. And I will appropriate to their negotiations every hour that can be spared without injury to more important businesses".

The following day Lord Grenville acknowledged Auckland's acceptance and stated he rejoiced very much at his undertaking the business which he feared would "be of no light labor or difficulty". At the same time he also acknowledged Lord Holland's acceptance.

These commissioners were well chosen. Lord Auckland was president of the Board of Trade and knew all the inside information regarding Colonial trade. He was also an able and experienced negotiator particularly well versed in French affairs. Moreover, he was a staunch friend of Grenville and represented the more conservative side in the government. Lord Holland was a nephew of Mr. Fox and favorable to granting concessions to America. Thus both sides were represented and each served as a check upon the other. Furthermore, they were men of pleasing personalities which made them agreeable to deal with.

On August 10 Auckland replying to an invitation, wrote to Grenville, "I will not fail to meet Mr. Monroe and Mr. Pinkney at your dinner on Wednesday next......... Confidentially speaking, the tone and tendencies of that negotiation seem to me to depend a little on the probabilities of a general peace. In the meantime, it certainly is desirable to show any ostensible and respectful attention to the discussion".
A few days later he wrote to Lord Holland and told him of the papers lent him by Lord Grenville which contained all the news published for and against the treaty of 1794 in America, stating that as soon as he was through with it he would send it to him. He also asked Holland if he had any papers or accounts that would throw light on the neutral question that were pending between Great Britain and the United States.

The British commissioner had a preliminary conference August 20 on the American business. The next day Auckland informed Grenville of the meeting and said, "Lord Holland was very frank and intelligent on the subject of our American enterprise, but seems to think it far easier than I believe it will prove".

Lord Auckland and Lord Holland had their second meeting together in regard to the American negotiation on August 23, and they proposed to meet the American commissioners on Wednesday the 27th, for at the first conference of the British commissioners American affairs were not discussed in detail. The same afternoon Auckland wrote to Grenville and told him of the meeting. He also stated, "In looking into the 12th Article of your treaty of 1794, I am led to call your attention to that expression in our proposed Order of Council which restrains the exportation in American bottoms of any sugar, indigo, cotton-wool, coffee, and cocoa. In the first place I believe that the practice exists of carrying these commodities as return cargoes to a limited extent; and in the next the prohibition forces the United States to be supplied by foreign colonies. But some unfortunate clauses were admitted into the American Intercourse..."
Some time between the 23rd and 26th, Lord Auckland had a separate conference with each of the American ministers, and in communicating this information Grenville on the 26th he said, "......I do not find that they are to bring forward any proposition beyond those of which we are aware; and they seem desirous to arrive soon at a right and friendly conclusion. But it will be absolutely necessary that I should have the benefit of your sentiments on several of the points before we advance in the discussion". The next day he expressed the same sentiment in another letter in which he stated, "In truth it is difficult to move further in this American business without knowing your opinion, and without the benefit of your judgment on some points of great difficulty; and it would be an idle attempt to state such points in writing. We shall be obliged to come to some decisions which I believe to be right, but the general prejudices of our countrymen must be managed, otherwise our decisions will be disavowed; and I am not sure my colleague is sufficiently aware of that danger".

After these preparatory moves, so highly interesting to us, as indicative of the British attitude, the British and American commissioners met on August 27, and formally exchanged powers thereby opening negotiations in earnest. At this meeting also, the American commissioners stated the object of their mission and the general nature of the stipulations in the their instructions.

In their explanations they made it particularly plain that no agreement could be reached unless a provision was made/
impressment. The British commissioners in replying said they considered the questions of impressment an extremely delicate and embarrassing subject. Lord Auckland therefore suggested that this question should be suffered to rest upon a mere understanding and should find no place in the projected treaty.

Four days later the British commissioners requested more precise information as to what stipulation in connection with impressment was proposed for restoring British seamen who had deserted. The American commissioners thus saw that it was vain to expect their consent to an arrangement on impressment in which some provision was not included.

The American commissioners therefore presented a project on this point extracted from Monroe's instruction of 1804, but requesting that it be received as "extra official". This project provided:

Article 1. No person on the high seas and without the jurisdiction of either party should be demanded or taken out of any ship belonging to the citizens or subjects of one of the parties by the public or private armed vessels of the other unless the persons were at that time in the military service of an enemy of such party; no person of one country could be made to serve on board of any vessel of the other party and any persons made to serve should be at once liberated and enabled by adequate recompense to return to their own country. In all questions arising as to the natural character of any person who claimed to be a citizen of the other power due credit must be given the public documents that his government should grant for his protection and if there were no such documents or they were lost, such other evidences should be received and admitted as
would be satisfactory in a court of judicature. Each party should try to prohibit fake documents.

Article II. Neither party should furnish refuge or protection to marines, sailors or other persons who had deserted from ships. The deserters shall be delivered up on demand to the commander of the vessel from which they deserted, or to other persons authorized, provided proof that they were deserters be made within two years from the time of desertion by an exhibition of the ship's papers. For the most effectual execution of this article, adequate provision would be made for causing the arrest on the application of the respective consuls or vice consuls to the competent authorities. All due aid and assurance should be given in searching for the deserters who should be detained and kept in prison at the demand of and expense of the consuls until they have the opportunity for sending them back. If they are not sent back in three months, they are to be set free.

The British negotiators however still manifested a strong aversion to any formal renunciation or abandonment of their claims to take from American vessels such seamen as should appear to be their own subjects. They pressed with much zeal a substitute provision to the effect that all persons comprising the crews of American ships should be furnished with authentic documents of citizenship, the nature and form of which should be settled by the treaty. These documents should completely protect the sailors, but, subject to this protection, the ships of war of Great Britain should continue to visit and impress on the high seas as before. In their argument they assumed
that the object of the American plan was to prevent the impressment of American seamen, and not to withdraw British seamen from the naval services of their native country in time of a great national peril for the purpose of employing them in American service. For if they should consent to make the American commercial marine a floating asylum for all British seamen tempted by higher wages and should these British sailors quit their service for the American service, the effect upon Great Britain might be fatal. The American ships might become refuges for an unlimited number of deserters even from the military marine in ports of the United States. They, therefore, objected to the plan the American commissioners proposed on the grounds that it was inadequate in range and object because it provided only for the future deserters and not for the large numbers of British seamen already employed in the American service. Lord Auckland in informing Lord Grenville of what had passed in the intercourse said, "It is clear that the main points are, the not pressing of seamen on the high seas and the question of a continuous or interrupted voyage. Unless they misrepresent things in America they would willingly yield a point on the latter to obtain anything from us on the former!"

A few days later he wrote, "As to the impressing point, I feel quite discouraged under a letter which I have received from Lord Howick, with some very curious specimens of fraudulent certificates". This letter was written on September 10.

On September 13, Mr. Fox died and it is not known just how soon the commissioners met again. A dispatch in the American State papers speak of no meeting until October 29 but a letter from Lord Auckland to Grenville, written from Eden Farm on
September 19, says, "Unless you have commands, I shall hardly go to town tomorrow, but Monday, when I am to meet Mr. Monroe and Mr. Pinkney at eleven." 36 The next evidence we have of interviews between the commissioners is a letter of September 24, from Auckland to Grenville which states: "I have worked hard during some days both with the American commissioners and at the committee of council in order to feel at liberty to absence myself for a fortnight." 37 A few days later Auckland went on a vacation and did not return to London until the middle of October.

On October 29, Lord Auckland wrote to Grenville inclosing an article on impressment saying, "I enclose the outline of an article on the pressing of American seamen, drawn up, as you will see very hastily and imperfectly by Lord Auckland and myself at our last meeting. The wording, of course, is objectionable, but we are both anxious to know whether the substance and general form of it are such as you would approve. Of course such an experiment could only be made for a given period and that a short one; but we meet the Americans tomorrow and are likely to talk chiefly on this article, we wish to know by that time if you have any insuperable objection to the substance of it, that we may not intentionally deceive them as to the final results of their demand on this part of the subject." 38 Grenville sent his reply the next morning, saying: "I own I feel great difficulties on the first view of the proposed article about pressing. They arise chiefly from my strong sense of the impossibility of obtaining a fair execution of the American part of this stipulation. The whole must, I think be considered by the cabinet before you can pledge the government to it." 39 To this note Auckland replied immediately and said he would be very sorry to pledge the Government on such a delicate
question until the Cabinet had been consulted. He advised that
the Cabinet pass on it the next week so he could give the American
ministers some information to transmit to their Government." 40

Meanwhile, the joint commission did not meet until November
5. The day preceding this interview, the British ministers sent
a note inclosing a report from Sir John Nicholl, the Advocate
General. This report had been made in answer to an inquiry from
the American commissioners in the interview on September 29, when
they asked upon what grounds Great Britain had a right to forcibly
take her seamen off a ship of another country. The report justi-
41
fied this pretention by stating that the King had such a right,
by his prerogative to require the services of all his seafaring
subjects against the enemy, and to seize them by force whenever
found, except within the territorial limits of another country. This report prepared Monroe and Pinckney for the attitude which
the British ministers would take on the morrow. They rejected
the project presented by the American commissioners and at the
same time presented a counter-project whereby it should be made
a penal offence for the commanders of British vessels to impress
American seamen on board American ships on the high seas and
similarly for the officers of the United States to grant certifi-
cates of citizenship to British subjects. Both sides discussed
the point, but could not agree upon it and adjourned to meet again
on the 7th. Just before the interview, Auckland writing Gren-
ville of the intended meeting said, "Our negotiation with them is
at a stand still and I am grieved at it; for, in the present state
of the world, it appears to me that even a colourable reconcilia-
tion and the friendship with the United States would be of an im-
portance infinitely outweighing the objections to the article in
question after such amendments as might have been admitted."
The rights of American seamen were taken up again with earnestness in this interview of the 7th. The Americans would not accept the British counter-project and plainly told the British minister if this point was not settled there was no need to proceed with the other topics. For it will be remembered this was the first of the points which Jefferson made clear in his instructions would be a sine qua non of the acceptance of the treaty by the American Government. The British negotiators did not wish the negotiations to end, but neither did they want to make vital concessions. They intimated that their government had given no recent cause for offence, and would continue the same policy, but it was their opinion that it would be better to leave the settlement of this topic until some future date. The American commissioners thereupon asked them to express their views in a note. Thus, this interview ended with neither party willing to make concessions and the question was as far from being settled as ever. However, before adjourning on the 7th, the commissioners agreed to meet again on November 12.

In the meantime, the British ministers drafted the note requested by the Americans and dispatched it on November 8. This note stated that "whereas when one nation is at war and the other at peace, it is not lawful for the belligerent to impress or carry from on board the vessel of the neutral, seafaring persons, who are the native subjects of the neutrals or others who are not the subjects of the belligerent; and whereas, from the similarity of language and appearance it may be difficult to distinguish the subjects of the two states, the high contracting parties agree that for the greater security of the subjects of the neutrals, they will enact such laws respectively as shall subject to heavy..."
penalties the commanders of the belligerent ship who shall im-
press or carry off the native subjects of the neutral and others
not being the subjects of the belligerent, from on board the
neutral vessel on any pretense whatever; and they further agree
to enact laws, respectively, making it highly penal in the sub-
jects of the neutral to grant any certificate of birth and country
of seafaring persons, without due evidence and proof of the same.\textsuperscript{44}

The American commissioners received this note November 9,
and as it was what they had expected, they decided that nothing m
more could be secured and it would be best to proceed with the oth
other objects of the negotiations. For as the American ministers
explained in communicating the progress of their negotiations to
their government, we have persuaded ourselves that by accepting
the invitation which it gives and proceeding in the negotiation,
we shall place the business almost, if not altogether on as good
a footing as we should have done by a treaty had the project whici
we offered been accepted.\textsuperscript{46} They agreed that this note would be
binding on the government because it was a public paper and
pointed out that it contained everything that could be desired
except the formal relinquishment of impressment. Here the sub-
ject rested. Therefore, when the treaty was signed, December
31, 1806, no mention of impressment was made therein and thus
one of the main stipulations laid down by Jefferson was disre-
garded.

But as we look over this proposal, it seems to be absolutely
fair. Everything the United States demanded was included in
this article. And it is very hard not to believe that this
would have settled the question of impressment if Jefferson had
not been so stubborn in demanding that the British make a formal
disavowal of the principle at stake. For as we see a little later on the agreement for disarmament on the Great Lakes was such a note and there has never been any question in regard to it. This note was legal and would have been as binding as an article in a treaty. The only place that a question might have been raised was in regard to naturalized Britishers. For, at this time and some time afterwards, England refused to recognize the laws of naturalization and held that if a man was "once an Englishman he was always an Englishman," while the United States claimed after an alien was naturalized he was the same as a native born citizen and subject to the same rights and protections. This article made no reference to these naturalized Englishmen and a cause for dispute might have arisen out of the British trying to impress these citizens. Nevertheless, even upon this score, the wording of the note is capable of American interpretations.

Leaving the question of impressment, we turn to the negotiations on the remaining issues (1) the regulation of the neutral trade between the United States and countries and their colonies who were England's enemies, and (2) the regulation of trade between the British Empire and the United States. Under the first issue also comes the question of the continuity of voyage and indemnity for American ships seized by the British in 1805, and the definition of blockade. It will be recalled that the regulation trade between the United States and the colonies of Great Britain enemies was another sine quo non in Jefferson's instructions. Very early in the negotiations, Lord Grenville had remarked that he did not feel the difficulty supposed by many to be in connection with the West India trade. He regretted the 12th article of
Jay's treaty had not been retained as it would have prepared a basis for the present negotiation. The article it will be remembered, provided "that the said parties endeavor to agree whether in any and what cases neutral vessels shall protect enemy's property; and in what cases provisions and other articles, not generally contraband, may become such." Although the American commissioners did not really discuss this question with Grenville they inferred from what little passed on this subject that opposition to their views was likely to develop. This inference proved true for Lord Auckland in a letter to Grenville on August 20, said: "It seems to be understood and established that in all cases where proof can be given of what is called a continuous voyage, the forfeiture must take place. But are we prepared to admit the further proposition that cargoes of colony produce bona fide landed and warehoused from French or Spanish possessions and even become bona fide the property of subjects of the United States to France and Spain? It appears to me that such an admission would soon become the means of an undisturbed transfer of the produce of hostile colonies to the mother country."  

The commissioners had their first interview on August 27, as has before been stated and from this meeting it became apparent that there would be serious difficulties in the way of an agreement. This question was not taken up again until after Mr. Fox's death. The British commissioners then repeatedly told the American ministers that they would agree to allow the United States to trade with the French and Spanish West Indies provided they would land the cargoes in America, store them for one month, and then reship them in another vessel. The American commissioners objected to the storing of goods for a month and the changing of ships.
As has before been stated, with the death of Mr Fox and the change of affairs on the continent after there seemed to be a change in the attitude of the British ministry. This change is seen especially in regard to the regulation of trade. For in a letter to Grenville on November 25, Auckland writes:

"The entire downfall of the continental powers makes it more than ever necessary to advert to interests which are merely British. Some merchants are applying for licenses to send in neutral ships cargoes of British manufacture to the French and Spanish islands, and to bring back for exportation the produce of those islands. We are legally empowered to grant such licenses and the measures which would expedient for the benefit of our manufacturer and for the drawing to ourselves an advantage which will otherwise go to the United States. But it may be objected that such an operation tends to give to the enemies' colonies all the enjoyments of peace; and also, that it would promote the export of foreign sugars to the continent of Europe to the disadvantage of their planters and merchants. Still I am inclined to the refusal with much reluctance. Might we not at least offer licences to neutral vessels to carry our manufactures to the French and Spanish islands, but not to bring back produce? It is a great and difficult question. I have also received applications for licenses to send British manufactures to Mauritius. But I conceive that we are restrained as to this point by the charter of the East India company. In this matter, also, we sacrifice our own interests to the interests of the United States. ** It has occurred to me that I can word an article in the proposed American treaty so as to obviate any recurrence to the foolish and teasing measure of non-importation;
and I have no doubt that we can induce the American ministers to accept it.

This letter shows that Great Britain was jealous of the American carrying trade and wished to share its advantages, also that the non-importation act had its effect. Further evidence of a desire on the part of Great Britain to limit this trade of the United States is shown in Auckland's letter of November 28. He writes Grenville, "as to the Colonial Article, after frequent and full discussion with the King's advocate I am satisfied that, if maintaining our principle and right of restraint we consent by an article to do only and fix a limited time what the Admiralty Courts now do, and with restrictions beyond what Lord Hawkesbury formally communicated to Mr. Rufus King, we shall not stand exposed to any material attack. A duty on the importation (it should rather be on the exportation) will certainly and decidedly be refused, nor would there be means of insuring the bona fide paying of such a duty. In truth I know of no means so good, as far as that may extend, as clogging the trade with landing, warehousing, reshipping, and proof (when required) of bona fide property. I had once thought that it might be useful to compel the not reshipping within a certain time; but that might lead to endless litigation."

Sometime between November 28 and December 5, the British Commissioners presented an article for the treaty to the American Commissioner on the interrupted voyage. For on December 5, Holland sent a copy of the article to Grenville, with the following explanation, "We found the most practical method of recommending
the increase of duty was to clog the other proposal with inadmissable stipulations. The amount of the drawback is left blank. Lord Auckland seemed to think that two-thirds (which would leave a duty of 4 per cent) would be sufficient, and it evidently is as much as the Americans can be induced to consent to. The official communication of Sir J. Nicholl's letter to Lord Hawkesbury implied that Great Britain would not exact further proofs of a circuitous voyage than those expressed in it, and they did not amount to the securities required in either of these articles, or even to those sketched in our dispatch of last month. We receive their answer tomorrow, and it is desirable in the course of next week to give them the result of our final determination. Lord Grenville replied the same day and stated that either of the alternatives would be satisfactory but that he preferred the "way of duty to that of warehousing and transhipment". Thus the question rested until the treaty was drafted.

The question of regulating the trade between the United States and the British Empire was not taken up until September 1, when the commissioners met on this day the British representatives asked the American ministers to explain the footing upon which they desired this commercial intercourse to be placed. The American commissioners replied that they desired the trade to be put upon the footing of the most favored nations. Lord Auckland expressed an opinion that there should be a restriction upon the tonnage as in the 12th article of the treaty of 1794; he also spoke of a duty to be imposed upon importations from the British islands which should be of a sufficient amount to check the exportation
of the articles so imported to Europe. His idea was that no part of the duty should be remitted as a drawback and he wished to comprehend in this plan the American importations from enemy colonies. The effect of this plan can be readily seen. It would force the imports of the French and Spanish West Indies into the internal consumption of American, thus leaving the British good for re-exportation. The British commissioners did not seem to be prepared to discuss the point they raised in regard to duties and the American commissioners suggested for their consideration the expedient of a mutual abolition of alien duties. In a letter of the same date Lord Auckland wrote to Grenville, "I am convinced that, as to the West Indies trade, we cannot go beyond seventy tons (as in your article; and it may be doubled whether we should go so far in time of peace". A few days later the American commissioners wrote Madison that if an open trade was obtained with the West Indies it would be with great difficulty. This issue was not taken up again until just before the treaty was drafted. It was finally agreed to put the British West India trade on the footing of the most favored nations. As for the trade with India, Canada, and the Indies no mention was made thereof until the articles were prepared for the treaty.

Other questions which came up in this negotiation were (1) the extension of the marine jurisdiction, (2) blockade, (3) contraband, and (4) the American non-importation act. The extension of the marine jurisdiction was considered as very important because several outrages had been committed within Am-
American ports and along the American coast which had enraged the nation. In the negotiations the American ministers cited these cases especially the case of the "Leander". When the American ministers called Lord Grenville's attention to the cases he replied that there could be no objection on their part to a suitable provision on the extension of the marine jurisdictions. The American commissioners therefore demanded that the neutral waters be extended to five miles. On November 14 Lord Holland wrote a note to Monroe and asked if the United States would support the additional two miles to the same extent against France. Monroe transmitted this note to Pinckney and they agreed to send a reply in the affirmative to Holland. Auckland wrote to Grenville on the 28th, "I have bestowed almost every waking hour this week on the American treaty. If Messieurs Monroe and Pinckney will accept the jurisdiction article of five miles excluding armed ships of our enemies from the additional two miles, I am sure that such an arrangement is not liable to any material objection; and that it is not unreasonable, in consideration of the peculiar shielings of the North American shores. An article with this stipulation was included in the treaty.

Very little negotiation took place on the question of blockade. Lord Howick notified Monroe on September 25 that the blockade from the Elbe to the Ems was discontinued. This seemed to pave the way for a better understanding, for on November 11, the American commissioners informed Madison that the question of blockade would be satisfactorily arranged.

Contraband also occupied a very small place in this negotiation. The American commissioners demanded that vessels upon a
return voyage should not be detained on the ground that they had carried contraband on their outgoing voyage. The British commissioners would not agree to this exemption. The Americans next attempted to get certain naval stores and provisions exempted unless destined to a port of naval equipment, but they only succeeded in getting tar and turpentine excepted from the list as was stipulated in Jay's treaty.

During the latter part of the negotiations the question of the non-importation act came up. It will be recalled that a copy of the non-importation act was not sent to the British commissioners until September 4. They acknowledged the copy of the act and expressed a desire that some plan be devised for suspending the act because it would go into effect before the negotiations would be closed and so complicate the situation. The American commissioners replied September 10, that the United States did not have the remotest desire to place any obstacle in the way of the negotiation and expressed a hope that the matter would soon be adjusted. In a letter to Madison the next day, Monroe advised the suspension of the act until some sort of an understanding was reached between the negotiators. Monroe notified the American commissioners on November 28 that the President would recommend the suspension of the act in a special message. In fact, the President delivered such a message on December 3 and a bill passed the House on the 6th for its suspension. It was then sent to the Senate where an amendment was added which gave the executive the right to further suspend it in case the state of affairs between the two nations should require it. The Senate vote was unanimous and the bill became a law December 15, 1806.
As the negotiation went on it became clear to the American ministers that England would not formally relinquish her principles in regard to impressment and Colonial trade and as the situation was becoming more and more complicated by other issues they decided it would be best to make a treaty on the basis of concessions they had obtained, every one of which was beneficial to the United States. By concluding a treaty they could settle things temporarily and then make a permanent adjustment after the war.

It will be remembered that after the death of Mr. Fox there came a change in the attitude of the British ministry and this was still more apparent after the Prussians were defeated at Jena. Napoleon now feeling himself master of the continent, issued his famous Berlin decree on November 21 blockading the ports of England. Although this decree came as an immediate consequence of the rupture of peace, it was actually a belated retort to the British order in Council of May 1806 which pretended to blockade the coast of Europe from Brest to the River Elbe. As soon as the news of the decree became known the British commissioners were still less willing to make concessions to America. For a time the American commissioners despaired of making a treaty. Happily better counsels won the day and Lord Auckland could write to Grenville on December 27, "Our friends, Messieurs Monroe and Pinckney, after thirty or forty very fatiguing discussions, have authorized me to prepare the copies for signature on Wednesday of Thursday next. We have made no farther changes, except what were evident improvements, and chiefly in the commercial article on the subject of certain duties, in the result of a conference.
which I had this morning with Mr. Vansittart and Mr. Roe. Innumerable alterations were proposed to us as far as was agreeable. On the whole I am not aware that we have done anything that is vulnerable or open to attack that may not with ease be resisted. And in the meantime the impression of a treaty being concluded, is of considerable importance. I think it highly material that you should assist Lord Holland in completing his paper to be presented previous to our signature. If the manner in which our blockades are honourably and efficiently executed can be well contrasted in that paper with the wild proclamation and "brutum fuemen" of Bonaparte's paper blockade (which he represents as a measure of retaliation) it would have a great and most useful effect; and is particularly desired by our American friends, who really seem at present to be anti-Gallicans; and whom, at any rate, we should wish to be henceforth considered as embarked with us to every extent short of taking part in the war. They confided to us that they are going to send a minister to Paris to the American minister there, to require an explanation of the Berlin Decree.

Here we have mentioned for the first time the note which was later to cause a great deal of trouble and was closely linked up with the important Order in Council of January 7, 1807. This note came as a result of the Berlin decree of November 21. As soon as this decree became known, that is, even before its formal announcement, the British Government began to make plans for retaliation. Thus in a letter of December 18, 1806, Auckland wrote to Grenville and told him of a letter he had received from Mr. Garland, member for Poole, strongly urging a measure
of retaliation. He called his attention to the fact that in August Great Britain had prohibited communication between the enemy's ports and ports especially blockaded. Auckland then outlined four measures that would prove effective.

(1) Would be to prohibit neutral vessels trading between enemy's ports and enemies' ports. This measure, Auckland reasoned, would be so severely felt by France and the countries subject to France, that England's trade with the continent would be promoted by it.

(2) Would be an instruction to British cruisers not to molest vessels passing between British ports and the ports in northern Europe which had lately come under the control of the enemies.

(3) Would be to extend all innocent articles, the instruction (already existing as to silk and Spanish wool) not to detain neutral ships on account of such articles coming to British ports or going from British ports.

(4) Would be to extend that system to Leghorn and the southern ports.

Auckland also spoke of the protests of the English merchants and of their demands for the government to pass some measure to relieve them.

The British commissioners saw that some retaliation was inevitable and with this in view they prepared the note to present to the American ministers previous to their signing the treaty. This note called attention to the Berlin Decree and pointed out that France sought to justify her own unjust pretentions
of confiscation as lawful prize all produce of English manufacture even though it might be the property of neutrals. Furthermore by declaring Great Britain in a state of blockade she sought to justify the excluding from French harbors every neutral vessel that had touched at an English port. Great Britain further attempted to show not only that Napoleon could not enforce this blockade but that the principle was repugnant to the law of nations. The note went further to explain that if France enforced this system and the neutrals acquiesced, England might be compelled to retaliate in just defence. It went still further and said, "The commissioners of the United States will therefore feel that at a moment when His Majesty and all neutral nations are threatened with such an extension of the belligerent pretentions of his enemies he cannot enter into the stipulations of the present treaty without an explanation of the intention of the United States or a reservation on the part of His Majesty in the case above mentioned, if it should ever occur". Moreover the note stated that "the undersigned have presented this note from an anxious wish that it should be clearly understood on both sides, that without such an abandonment on the part of the enemy, or such assurances or such conduct on the part of the United States, His Majesty will not consider himself bound by the present signature of his commissioners to ratify the treaty, or preclude from adopting such measures as may seem necessary for counteracting the designs of his enemy".

This note was presented on December 31 at the time the treaty was signed. Monroe and Elcockney hesitated about sending it to their Government but finally consented with reservations. The
treaty together with the note were dispatched by the American ministers to their government on January 3, 1807. In transmitting the note the American representatives said, "We do not consider ourselves a party to it, or as having given it in any slightest degree our sanction".
Notes for Chapter IV.

2. Fortescue Papers, VIII, introduction, XXXIV.
3. This evidence of Great Britain's desire is shown in a letter to Grenville on November 25, 1806, "Some merchants are applying for licenses to send in neutral ships cargoes of British manufacture and bring back for exportation the produce of these islands. We are legally empowered to grant such licenses, and the measures would be expedient for the benefit of our manufactures, and for the drawing to ourselves an advantage which would otherwise go to the United States", Fortescue Papers, VIII, 441.
7. Fortescue Papers, VIII, introduction, XIX.
8. ibid, XXI.
9. ibid, XXVI.
11. ibid, 128.
12. ibid, 129.
13. ibid, 129.
14. ibid, 129.
15. ibid, 129.
16. ibid, 128.
17. ibid, 131.
18. ibid, 130.
19. Fortescue Papers, VIII, 263.
20. ibid, 265.
20a. Lord Auckland was born in 1745, died 1814. In 1772 he became a member of the House of Commons; 1872 he became a member of the Privy Council; 1778 he was selected as one of the commissioners to America for the purpose of restoring peace; 1782 appointed Chief Secretary of Ireland; 1785 appointed Member of Committee of Council for French trade and was named Envoy Extraordinary and Minister Plenipotentiary to France for conducting a treaty of commerce; 1788, Ambassador to Spain; 1789 Ambassador to Holland; 1790 conducted a convention between the Emperor Leopold, Great Britain, and the Estates General of United Provinces relative to the Netherlands; 1806 President of the Board of Trade and also commissioner to settle American affairs. America should feel quite honored in having one of the foremost diplomats appointed to negotiate with her. This shows that England did not lack interest in the negotiation.
22. Fortescue Papers, VIII, 310.
23. ibid, 315.
24. ibid, 340.
In the same letter he stated that he would send a draft
for the order in council for the American intercourse.
This order was based upon the bill passed by Parliament
in July, 1806, Fortescue Papers, VIII, 355.

Fortescue Papers, VIII, 410

ibid, 410.

ibid, 411.

Am. State Papers, For. Rel., III, 133.

ibid, 133.

ibid, 133.

ibid, 137.

ibid, 133.

Fortescue Papers, VIII, 310.

ibid, 315.

ibid, 340.

ibid, 355.

ibid, 410.

ibid, 410.

ibid, 410.

Fortescue Papers, VIII, 429.

Am. State Papers, For. Rel., III, 137.

ibid, 137.

ibid, 140.

ibid, 137.

ibid, 137.

Fortescue Papers, VIII, 441.

ibid, 445.

ibid, 459.

ibid, 459.

Am. State Papers, For. Rel., III, 133.

Fortescue Papers, VIII, 302.

Am. State Papers, For. Rel., III, 133.

The "Leander", a British ship of war, had been laying off
the coast of New York, stopping coasters, searching mer-
chantmen, seizing ships and impressing American seamen.
On the evening of April 25, 1806, she suddenly fired on
the American sloop, "Richard" as the latter was approach­ing
New York, one shot struck the water forty yards from
her bow; the other passed directly over her. The "Rich-
ard" was quickly rounded, but just at that moment a third
ball, badly aimed, struck the tuffrail and quarter-rail
and carried off the head of John Pierce, the helmsman.
News spread through the city and the whole population
was thrown into confusion, McMaster, History of the
People of U.S., III, 236-237.

Monroe's Writings, (Ford), IV 494.

Fortescue Papers, VIII, 445.

Am. State Papers, For. Rel., III, 137.

ibid, 137.

ibid, 141.

ibid, 136.

Fortescue Papers, VIII, 484.

ibid, 473.

Am. State Papers, For. Rel., III, 151. --65. ibid, 142.
The treaty concluded by the American and British Commissioners on December 27th and signed December 31st was transmitted with a letter of explanation by the American Ministers to their Government on January

Article I. Provided for peace between the United States and Great Britain.

Article II. Stipulated that the first ten Articles of the treaty of 1794 were permanent.

Article III. Provided that vessels belonging to the United States and sailing direct from American ports should be admitted and hospitably received in all sea ports and harbors of the British domains in the East Indies and allowed to carry on trade in all articles except those excluded from each country respectively. It was also stipulated that the United States should pay no higher duties on importations or exportations than should be payable when such goods were imported or exported in British vessels. Finally all goods must be carried to an American port and unloaded before being reshipped to other countries.
Article IV. Provided for the reciprocal and perfect liberty of commerce between Great Britain and the United States. The people and inhabitants respectively should have liberty and security without hindrance and molestations, to come with their ships and cargoes, to lands, countries, cities, ports, places, and rivers, within the domains and territories of the other and to hire and possess houses and warehouses for the purpose of commerce. The merchants and traders of each party should enjoy the most complete protection and security for their commerce but were to be subject to the laws of the two countries respectively.

Article V. Provided that the duties should be no higher than for the most favored nations and no prohibitions should be imposed on exportations or importations of any article to or from the territories of the two parties that should not be equally extended to all other nations.

Article VI. Provided for no arrangement of the West India trade and until regulations were made each party should remain in complete possession of its rights in respect to such an intercourse.

Article VII. Provided that either party could appoint consuls for the protection of trade, and that
these consuls should reside in the domains or territory of the other.

Article VIII. Stated that vessels detained because of being suspected of carrying enemy property or contraband of war, or for other lawful cause should be taken to the nearest port where that part of the cargo belonging to the enemy could be confiscated and the vessel allowed to proceed. Vessels thus detained which were innocent should be given damage for the time lost.

Article IX. Declared that contraband comprised all arms and implements serving for the purpose of war by land or sea, timber for ship building, copper in sheets, sail cloth, hemp, cordage, etc.

Article X. Provided that vessels sailing to ports not known to be blockaded must be turned away from such port or place and not detained if the cargo was not contraband. Such vessels were not liable to confiscation unless after notice had been given of the existence of a blockade, attempts were made to break the blockade of the said port.

Article XI. Declared that all articles of the growth, produce and manufacture of Europe, not contraband of war should be freely carried from the United
States to the port of any colony not blockaded, belonging to England's enemies, provided the cargo had been previously landed in the United States and duty paid on the goods and that on re-exportation a duty of not less than one per cent ad valorem should be paid. Moreover, the goods and vessel carrying them from the time of their clearance from an American port should be the bona fide property of citizens of the United States. Also all articles not contraband of war, being the growth and production of enemy colonies, might be brought to the United States and landed and then reshipped to any port in Europe not blockaded.

Article XII. Provided that the zone of neutral waters should be fixed at five marine miles from the American coast, and this limit was to apply for all nations that recognized this stipulation.

Article XIII. Provided that in searching merchant ships, the commanders of ships of war and Privateers should conduct themselves as favorably as the course of the war then existing might permit toward the most friendly power that might remain neutral, observing as much as possible the acknowledged principles and rules of the Law of Nations.
Furthermore, they should forebear doing damage to those of the other party or committing any outrages against them and if any act were committed to the contrary, the commanders should be punished and reparation be made for the damage. Moreover, it was provided that all commanders of privateers must furnish at least two responsible sureties who should give bond for two thousand pounds sterling to satisfy all damages and injuries. Furthermore, it was agreed that whenever a judge of a court of admiralty should pronounce sentence against any vessel, goods, or property of the other party, a copy of the proceedings and sentence should be delivered to the commander of the said vessel without delay.

Article XIV. Provided that neither party should receive pirates in its harbors and should punish all inhabitants guilty of such acts or offences. All goods and ships thus brought into port should be seized and returned to the owners as far as possible.

Article XV. Declared that the subjects and citizens of the two nations should not do any acts of hostility or violence against each other, nor accept commission
or instruction so to act from any foreign Prince or State, enemies to the other party, nor should the enemies of one party be permitted to invite, or endeavor to enlist in the military service any of the subjects or citizens of the other party. It further provided that if any subject or citizen of the said parties respectively, should accept any foreign commission or Letter of Marque, should be punished as a pirate.

Article XVI. Declared that neither party should order or authorize any acts of reprisal against the other.

Article XVII. Provided that ships of war of the one at all times should be received in the ports of the other and that the crew and officers should obey the laws of that country and in return they should be treated with respect due them. Furthermore, if any ship should be driven by necessity into ports which were not ordinarily open to them, should, upon manifesting that necessity to the satisfaction of the government of that place, be hospitably received and permitted to refit and purchase such necessaries as they should require.

Article XVIII. Stipulated that no foreign privateer could be armed in the port of either country.
Article XIX. Declared that it was lawful for ships of war and privateers of either party to carry wherever they pleased, the ships and goods taken from their enemies without paying any fees to the officers of the admiralty, nor should they be detained, seized, or searched, but be at liberty to go to places mentioned in their commission. Moreover, neither party should shelter a privateer that had made a prize upon the other party, but if the ships were driven into port by stress of weather, departure must be hastened as soon as possible and neither party should allow the commerce of the other to be seized within its neutral waters. However, if such a case should occur, the parties should endeavor to obtain damage from the country to which the privateer belonged.

Article XX. Provided that if at any time a rupture between the United States and Great Britain should occur, the merchants within the domain of either should remain and continue their trade so long as they obeyed the laws.

Article XXI. Stated that each party should on mutual requisition deliver up to justice all persons charged with murder or forgery, upon suitable
evidence and the expense should be borne by the party making the requisition.

Article XXII. Declared that in case of shipwreck, all goods recovered should be returned.

Article XXIII. Provided that each country should be placed on the footing of the most favored nations. Moreover, any concession granted to any other nation should automatically extend to the two countries, respectively.

Article XXIV. Stated that each country should communicate any law made in regard to the slave trade.

Article XXV. Provided that this treaty should not affect the treaty or treaties then actually subsisting between either of the high contracting parties, and any other power or powers.

Article XXVI. Stipulated that the treaty should be in effect ten years.

The letter accompanying the treaty explained the several articles and in closing the writers stated that they regretted that no provisions were made against impressment but they expressed a belief that Great Britain would soon adjust the matter. Furthermore, they stated that they had not abandoned the claim for indemnity with the signing of the treaty.
Monroe and Pinckney had just dispatched the treaty and letter of explanation when the British made public their famous Order in Council of January 7, 1807, which blockaded every port in Europe from which the British flag was excluded. England declared this policy was in retaliation for Napoleon's Decrees. These decrees were only steps to others, both on the part of Great Britain and France, which led to the war of 1812. America protested against this decree but England would not agree to withdraw it unless Napoleon would revoke the Berlin decree and as time went on America and Great Britain drifted farther and farther apart and as we well know, the climax was reached in 1812 when the United States declared war on Great Britain.

The American Commissioners did not return home after the signing of the treaty of December 31st but remained in England to negotiate a supplementary convention on questions that remained unsettled by the treaty just concluded. This negotiation was not taken up until February 1807. The British Commissioners wrote to Monroe on February 10th, announcing their authority from their Government to open negotiations on the questions remaining to be settled between the two countries. These questions were: impressment, indemnity, boundaries, navigation of the Mississippi
river, and Indian trade. They proposed a meeting for the following Saturday or Tuesday. The next day Monroe sent the note to Pinckney saying, "If you have no objections, I prefer the earliest day. Will you be so good as to give an answer to that effect. Perhaps it may be well to express some satisfaction that his majesty has thought fit to commit this additional trust to characters in whom we so much confide or with whom we have been happy to have been connected in the late negotiation, though do as you think best". 

The negotiations were resumed at once and the subject of impressment was again taken up. The British Commissioners invariably declared that the practice would be strictly conformable to the spirit of the Article which they had settled with the American Ministers. They stated that the prejudice of the navy and the country generally was so strong against the project presented by the United States that the ministry could not encounter it in a direct form; and in truth the support of Parliament could not have been relied on in such a case. Moreover, they had an idea that by discontinuing the practice in the mode proposed by them, there would be little shock to the public feeling and the prejudice would be gradually overcome where this would be an impossibility if stipulations were made in a treaty. The
commissioners had nearly completed a project for the supplementary convention when the news reached them that there was to be a change in the ministry. For on March 24th Lord Holland wrote a note to Monroe enclosing a copy of the project and stated he hoped the new minister would instruct them to proceed to sign. He then expressed his official approbation of the liberal manner in which Monroe and Pinckney concluded the negotiation. Here the matters rested until the new ministry took charge of affairs.

With affairs now at a standstill until the new ministry could be formed, we will turn to affairs in America. It will be recalled that the American commissioners wrote to Madison November 11th stating that they were going to conclude a treaty without an article on impressment. This letter reached America about February 1st. Madison immediately wrote to the American ministers expressing regret at the turn the negotiations had taken and at the same time stating the President's view. Jefferson thought it would be better under all circumstances if no satisfactory or formal stipulation could be made on impressment, to terminate the negotiation without any formal compact whatever, but with a mutual understanding founded on friendly and liberal discussions and explanations, that in practice each party would entirely conform to what should thus be informally
settled. Madison authorized the commissioners if they should agree to this arrangement to give assurance that, as long as it was respected in practice by the other party (more particularly on the subject of neutral trade and impressment) it should be recommended to Congress by the President, not to permit the non-importation act to go into effect. They were also authorized to inform the British Government that, if nothing came up to complicate the situation, the President would exercise the authority vested in him and continue its suspension from July 1st to the term limited by the act. Meanwhile, this delay would afford Congress, which would then be in session, the opportunity of making due provision for the case. Madison further instructed the commissioners that if a treaty had already been signed without an article on impressment, and was on its way to America, the British Commissioners should be candidly apprised of the reason for not expecting its ratification and on this ground they should be invited to enter anew on the business. In these instructions, Jefferson explained very clearly that for a treaty to be accepted it must contain an article on impressment, but if the American Commissioners were unable to obtain such an article, to make no treaty at all and let affairs rest on an informal agreement. He knew a treaty without such an article would be refused by the Senate, whereas the
informal agreement would not have to be passed on by that body.

After Madison outlined the President's view, he proceeded to make some observations on the late communications. In regard to impressment, he pointed out the British Government's mistake in supposing there had been no recent causes for complaint and cited the numerous cases of impressment in the West Indies. Moreover, he pointed out to the commissioners that the British note of November 8, 1806 was not a sufficient remedy for this great evil because they saw only the favorable side of their commanders, and he maintained that if the United States yielded to the claims of Great Britain, she would surrender what was deemed an essential right of the flag and of her sovereignty without acquiring any new rights, and her citizens would still be exposed to the calamitous mistakes of the British sea captains. 9

Madison also made some comments on colonial trade. He objected to the storing of goods for a month and the changing of ships, as the naturalization of property because the concessions would all be on the side of the United States and the sacrifice would be nothing short of a complete abandonment of her principles, while Great Britain would make no sacrifice at all. Moreover, he stated that if the West India trade could not be put on the same footing as was
authorized by the instructions, it would be better to leave it as it was and thereby each party could make such regulations as would be justified by those of the other. 10

It will be recalled that the treaty had been signed and despatched just one month when Madison wrote this letter. The treaty reached America March 15th. Congress was then in session but Jefferson did not send the document to the Senate for its consideration. Instead he conferred with his "official advisers" and decided to send the instrument back to England with the suggestion to the American Commissioners that they might use it as a basis for further negotiations.

These instructions were sent May 20th, 1807. The President expressed the opinion that concessions should be made by Great Britain rather than the United States, giving as his reasons, (1) That a concession on the part of the United States would violate both a moral and political duty of the government to her citizens which would not be the case on the other side, and (2) That a greater number of Americans than British are, in fact, impressed from American vessels. On these grounds the President would not accept any arrangement formal or informal which did not stipulate against impressment of American seamen. He listed six alterations that were essential before the treaty would
be accepted:

1. Some provision against impressment must be inserted.
2. The restrictions on colonial trade must be removed.
3. The articles forbidding trade with the Indies save in ships coming directly from or going directly to the United States must be stricken out.
4. Those who had suffered by illegal capture must be indemnified.
5. The two articles giving to English cruisers and their prizes in the ports of the United States better treatment than was given to their enemies must be altered.
6. No such alternative as was presented by the declaratory note on the subject of the French decree of November 21, 1806, would be admissible.

The President objected most to the eleventh article of the treaty. He regarded it as putting severe restrictions on the trade of the United States. It will be recalled that this article required the landing of goods from colonies of Great Britain's enemies and the payment of duties upon them before being reshipped. The President held that if the
goods were not contraband they had a right to direct trade. He instructed the commissioners if Great Britain would not renew Article XIII of the treaty of 1794 in regard to the East India trade, it should entirely omit such an article.

Other alterations were given which would make the treaty more acceptable to the United States.

In regard to Articles II, IV and V, which regulated the trade, two important questions were raised, (1) whether they would be a bar to further regulations, and (2) whether the parties were or were not mutually restrained from laying duties as well as prohibitions unfavorably discriminating between articles exported to other nations. It was pointed out that in the first case the construction which seemed always to have been put on the same stipulation of the treaty of 1794, was that no bar could be created. However, in the second case the American Government had always construed this restraint to be mutual and applicable to discriminations of both kinds, but the British Government had never yielded to this view. Jefferson made it clear to the American Commissioners that this point merited serious attention, because in the case of duties the British Government was left free to impose duties while the United States was restrained by the constitution. He further instructed the ministers to get an explanation, or an amendment, if
possible, to restrain Great Britain from taxing the ex-
ports to the United States, or at least putting them on the 
footing of the most favored nations. Instructions in re-
gard to the other articles were as follows:

Article VII. Would be more reasonable without the 
last paragraph.

Article VIII. Omit.

Article IX. Pitch and rosin should be included in 
the excepted list and if this was not obtained 
to omit the list of contraband.

Article X. Blockade should be more clearly defined.

Article XII. The right of search should be suppressed 
to make the additional two miles marine jurisdic-
tion of a real advantage to the United States.

Article XIII. The wording should be made clearer.

Article XVII. So much of the article as related to the 
admission of ships of war, should be advantageously 
changed for a general stipulation.

Article XXVI. Would be more desirable if it should be 
limited as in the instructions of January 5, 1804.

In case all these arrangements were rejected, the 
commissioners were then to submit the following article:

"It is to be agreed that after the term of ____ months,
computed from the exchange of the ratification and during a war in which either of the parties may be engaged, neither of them will permit any seamen not being its own citizens or subjects and being the citizen or subject of the other party, who, shall not have been for two years, at least, prior to that date constantly and voluntarily in the service or within the jurisdiction of the parties respectively to enter or be employed on board any of its vessels, navigating the high seas; and proper regulations enforced by adequate penalties, shall be mutually established for distinguishing the seamen of the parties respectively and for giving full effect to this stipulation".

Madison likewise pointed out to the commissioners as a serious objection that the proposition had been framed so as not to comprehend among British seamen those who had been made citizens of the United States by naturalization.

In case great difficulties were encountered in readjusting the many provisions of the treaty of December 31, 1806, Madison thought it would be advisable to simplify the transaction by confining it to a few essential objects or by adding only a few others of the least difficulty and the greatest importance. He also suggested a general
article for the rest of the questions and leave them for future adjustment. A general stipulation of this sort regarding trade would be advantageous to the United States in that it would abolish and prevent British discriminations on exports. Moreover, it would be advantageous to Great Britain with respect to American discriminations on imports. By these communications, America's views are clearly expressed and it is very apparent that she considered the negotiation a certain failure.

Turning again to the affairs in Great Britain, it will be recalled from a previous paragraph that a new ministry was being formed and that the supplemental negotiation had been suspended until this ministry took office. The Duke of Portland became Prime Minister and Mr. Canning succeeded Lord Howick as Secretary of Foreign Affairs. On March 27th, the diplomatic corps had their first interview with Mr. Canning. Although the meeting was general, a separate audience was given to the representative of each power. At Canning's request, the American Commissioners gave him a concise but just view of the state of business between the two governments. Canning appeared not to have heard before of what had taken place relative to the project of a supplemental convention. He stated he had come too recently into office to say anything decisive on any of the topics but would make himself acquainted with them
and give them another interview later on.

Such was the state of affairs when the American ministers received Madison's letter of February 3, 1807. This dispatch reached England about April 1st. Monroe and Pinckney called on the British commissioners soon after receiving the letter and communicated the substance of their instructions, hoping they would be able to help accomplish the desired objects, but found with the change of ministry they could do nothing. Lord Auckland and Lord Holland expressed regret that it had not been possible to arrange the subject of impressment by treaty. They admitted that the American ministers had a right to expect from the new ministry an explanation of its views relative to the project of a convention and also to indemnity and impressment. The British Commissioners could give no hope as to what the new ministry might do. They stated they had done all they could and intimated it would be best to secure an interview with Canning and find out his views. Immediately after the interview with the British Commissioners, Monroe and Pinckney requested an interview with Mr. Canning which was granted at once. He told the commissioners that he heard the treaty had been rejected and asked if it were true. They assured him there was no foundation for such a report and they believed the treaty would be ratified. However,
Canning thought best to let matters rest until some definite news came from America.

A few days later, the American Commissioners wrote to Madison and inclosed a project presented by the British Government relative to the boundaries between Great Britain and the United States. It contained the following preamble and provisions:

"The second article of the treaty of amity, commerce, and navigation concluded December 31, 1806 agreed that the several articles of the treaty of 1794 which have not expired nor as yet had their full operation and effect, shall be confirmed in their best form and their full tenor, and that the contracting parties will also, from time to time, enter into friendly explanation on the subject of said articles for the purpose of removing all such doubts as may arise or have arisen as to the true import of the same, as well as for the purpose of rendering the said articles more conformable to their mutual wishes and conveniences."

Article I. Defined the boundary between the St Croix river and the Bay of Fundy: A line beginning in the middle of the channel at the mouth of the St Croix river, thence through the middle of the channel between Deer Island, Marvel Island, and Campo Bello Island, on the east, and Moose,
Dudley and Frederick Islands on the west, thence around the point of Campo Bello Island to the Bay of Fundy.

Article II. Provided for a commission to determine the northwest angle of Nova Scotia.

Article III. Provided that the same commission should determine the head waters (northwestern-most) of the Connecticut River according to the treaty of peace of 1783. It further provided that the commission should determine the boundary line, described in the treaty of 1783, between Nova Scotia and the Connecticut River.

Article IV. Provided for the payment of the Commissioners.

Article V. Stipulated that a line drawn due west from the Lake of the Woods to the 49th parallel should be the line of demarcation between Great Britain and the United States, as far as the territories of the United States extend in that quarter.

Article VI. Declared that the United States should allow Great Britain the free navigation of the Mississippi River.

Article VII. Guaranteed the right of trade as in the 3rd article of the treaty of 1794 and of the
explanatory article concluded at Philadelphia in 1796, and provided that it should be extended to both parties, with the exception of the Hudson Bay Company. It further provided that the duties on goods imported by land or inland navigation should be no higher than those imported from Europe or beyond the seas. This included the matter of Indian trade.

Article VIII. Declared that it would be expedient for the exchange of gypsum, grindstones, and certain other articles of the produce of British Colonies in North America, and the British West Indies, to be exported from the said colonies to the United States, in return for horses, cattle, grain, provisions, slaves, pitch, tar and turpentine. Regulations and restrictions should be made from time to time.

Article IX. Provided that the first six articles be permanent and articles seven and eight be limited to ten years.

Business was now at a standstill in Great Britain and an event was foreshadowed which was to change the whole aspect of affairs. In the spring of 1807 after the change
of the ministry and the news of the certainty of the enforcement of the continental system, England stationed men of war near the American ports and searched every outgoing ship and impressed great numbers of American seamen. Finally matters reached a climax when Vice Admiral Berkeley of the British service, having lost a number of his seamen by desertion, issued orders to stop the American frigate "Chesapeake" and search for the missing sailors. In taking this action, he declared that he recognized American rights to pursue the same course toward any English man of war. Under these instructions, His Majesty's frigate "Leopard" overhauled the "Chesapeake" on June 22, 1807 off the coast of Virginia and forcibly removed four seamen, one of whom was hanged at Halifax as a deserter. This outrage aroused the United States to a high pitch of excitement for such an insult to the flag of the United States was even more distressing than the impressment of men from private vessels. The President at once issued a proclamation ordering all armed British vessels to leave American waters and Congress immediately demanded reparation for the insult to the American flag. Madison sent instructions to the American Commissioners to suspend all further negotiations until this affair should be settled. Three days later Jefferson wrote to James Bowdoin (American Minister) and said, "This country has
never been in such a state of excitement since the battle of Lexington. In this state of thing, it is necessary to cultivate the friendship of France and Spain."

Before the news of the Leopard-Chesapeake affair reached England, the American Commissioners had informed Mr. Canning of their instructions to renew the negotiations as the President had refused to ratify the treaty. The Americans had already presented a project on impressment and one on indemnity. In this note they explained the topics more fully. They stated that one of the primary objects of this negotiation was to conclude with Great Britain a formal and explicit arrangement on the topic of impressment. Moreover, they pointed out that this pretension had been the subject of frequent discussions and that when an extraordinary mission to Great Britain had been determined upon, one of the expressed instructions had been to provide against this evil and to make no treaty unless it was provided for. Alluding also to the written declaration of December 31st by which the British Commissioners accompanied their signature of the treaty, Monroe and Pinckney explained that it had created unnecessary embarrassment in the way of the acceptance of the treaty. Furthermore, they observed that there was nothing contained in the treaty to prevent lawful retaliation and that they hoped Great Britain
would see the uselessness of this declaration and withdraw it.

When the news of the "Chesapeake" affair reached England, all negotiation relative to the treaty was abandoned and that question taken up. A few days later the British Commissioners resigned. In the note informing the American Commissioners of their resignation they stated:

"Nothing but the gratification of having official relations with them would have induced them to retain their commissions as long as they had."

The rest of the negotiation was carried on by Mr. Canning. But with the Leopard-Chesapeake affair came the end to the treaty negotiation for the remainder of the time between this event and the declaration of war of 1812, was devoted to other questions.

After the news of the failure of the treaty and the suspension of the supplementary negotiation, a criticism of the treaty of 1806 was published in England. It was published by Thomas Courtenay in the form of a pamphlet entitled "Observations on the American Treaty." The pamphlet was written in a series of letters signed "Decius". The second letter criticised the first six articles of the treaty. He pointed out that the second article confirmed the first ten articles of the treaty of 1794 and at first sight seemed only to be a renewal of former treaties, but the fourth and fifth articles, which refer to the provisions of
the treaty of 1783 relative to the rivers Mississippi and St. Croix, provided for a commission to determine the extent of the former and the source of the latter. Furthermore, if these matters had been settled the results of their awards and not the mere references ought to have been a part of the treaty and if nothing had been done, the negotiators ought to have provided some new stipulation. He raised the question whether the third article was more favorable to the United States or Great Britain. At any rate, he regarded it as a concession because a mass of British subjects were excluded from this trade. On the fourth and fifth articles he made very little comment, and on the sixth article he expressed his satisfaction that the British Commissioners had made no concessions. On articles VII, VIII, IX and X, also, very little criticism was offered.

Article XI, however, seemed as distasteful to the British as it was to the Americans. Courtenay reviewed the restrictions and concessions that had been made in regard to this treaty and how America sought to evade these laws. He pointed out the fact that it was very hard to distinguish between a real and a fraudulent importation. However, he believed that Lord Auckland and Lord Holland did not aim to relax the principle but to establish a test by which it should be applied. The chief objection to this article
was that the enemies would be the gainers, that they would feel no inconvenience at having to pay a higher duty while Great Britain had practically surrendered her principle. The measure was denounced as radically vicious and inadequate to any purpose that could be intended. It was the English opinion that it would have been better to suspend the rule altogether or enforce it strictly. By enforcement they would have had full rights as belligerents and would have had America as a friend or put her disposition to a sure test but, as it was, the actual measure benefitted neither.

Articles XII to XXV, except those mentioned, were copied from the treaty of 1794 and no comment was made on them, but on Article XIII which secured to America the rights of the most favored nations and declared all treaties hereafter made by either party were to extend in all their favorable operations to the other, was objected to because it was liable to cause inconvenience. The objection was not to reciprocal communications in the advantages of trade but to the extending *ipsa facto* to America whatever privileges in navigation Great Britain might grant to other powers. On the remaining articles no criticism was made.

Taking up the question of the note presented at the time of the signature of the treaty, a protest was made against coupling it with the treaty. However, Courtney
did not object to the general principle of the note and expressed his opinion that if the British Ministry had it in mind to adopt stricter regulations in respect to neutral trade, it was a good plan to express this determination to the neutral ministers before signing the treaty. The objections to the note were (1) the manner in which it is expressed, and (2) the qualifications with which it appears to have been accompanied. The last objection was considered the more serious of the two because it seemed to allow Great Britain to go no further in retaliation than the exact point where Bonaparte would be pleased to stop.

In the last letter of his pamphlet Courtenay considered the treaty as a whole. He was opposed to the treaty because there was an omission of an article on impressment. He thought the right of search ought to have been asserted with firmness and stated that America had been given every advantage, that Great Britain had relaxed her laws in favor of the United States; had granted intercourse with the British colonies, etc; but all these concessions were thrown away on America who did not appreciate them. To prove his point, he cited Jefferson's rejection of the treaty because England had not made more concessions in the trade with her colonies, and had not sufficiently relaxed the laws of blockade and the right of search. In view of all this, he asked if Great Britain was not justified in saying that all these
A few weeks after Courtenay's criticisms were published in England, Monroe wrote a long letter to Madison in defense of the treaty. He stated that the idea of the public was that the rights of the United States had been abandoned by the American Commissioners in the late negotiation, and that the seamen were left to depend upon the mercy of the British cruisers. He pointed out that this idea was erroneous and that he believed the note of November 8th was both honorable and advantageous to the United States, furthermore, it imposed on England the obligation to conform her practice to it until a more complete arrangement should be concluded. The terms of this note omitted the words "high seas". Monroe pointed out this fact and stated he knew that the omission was intentional and meant that England aimed to stop the practice entirely. Moreover, Monroe called attention to the fact that the United States was free to accept or reject the project as she saw fit while on the other hand it was binding on Great Britain.

Taking up the treaty he first explained Article XI and showed that this article was objected to because it was construed to shut American commerce from the channel left open by the decisions of the British courts and the principle communicated by Lord Hawkesbury to King. Monroe stated the popular opinion supporting this construction and showed it was
wholly unfounded. He further explained that this article was not intended to regulate commerce but to settle the question of the continuity of voyage. To make this point clear, he reviewed the Orders in Council since 1793 and showed that England had sought to inhibit the direct trade of the United States and enemy colonies and Europe, but that they never attempted to limit the direct trade of the United States with any European country, even the parent country of the colonies. Furthermore, he called attention to the construction put on the article that the United States was prohibited from carrying goods from Asia or Africa to the West Indies because the article only stipulated that goods of European manufacture might be carried. He explained that the trade between the United States and Asia and Africa was not an enemy trade and could be carried on the same as the trade of any other neutral nation. Moreover, after goods were received into the United States, no matter from what quarter they came, they were American property and might be shipped to any other country. He showed that the British principle did not controvert this doctrine, but asserted it in the widest range, that they claimed only the right to seize goods enroute from the colony to the mother country and vice versa, provided they were not incorporated in the stock of the United States. This article which explains the conditions by which the
continuity of a voyage was broken, was as favorable as the United States could expect and he explained that the duty the United States would have to pay would be only a small recompense for the American right to trade and was nothing in comparison to the advantages gained.

The United States objected to the stipulation that for any acts of hostility committed within the additional two miles marine jurisdiction, she should demand reparation. Monroe called attention to this and showed that it did not apply to Great Britain alone but to any nation who would recognize the additional limit.

Article X, which related to blockade, was discussed briefly. He stated that he believed this article in connection with the paper of December 31st, placed the question on satisfactory ground, because the note of the 31st stipulated that a sufficient force must be maintained to make the blockade effective.

On the other articles brief comments were made and in closing he expressed his view on the treaty as a whole, saying it was not as satisfactory as they wished but the state of war in Europe made them cautious. Russia was on the side of England and likely to continue so, Austria leaned that way, Prussia was lately defeated but not subdued, and the Emperor of France was making bold experiments, therefore, for these reasons, they felt it would be best to make
a treaty. He also gave another reason and that was that the United States was not on good terms with Spain, and France was an ally of Spain and this had also to be taken into consideration.

Thus we have three different points of view,—one from the side of the American Government, the other from the angle of the British people and the third from the standpoint of the negotiators. In looking back over these years of negotiation and viewing the issues from their very origin, the question comes to our minds, was the negotiation a fair one, could the treaty of 1806 be accepted, and the war of 1812 averted? The traditional view has been that the treaty was unfair and that the United States would have sacrificed her self-respect if she had accepted it. It has been held that the British Government was unfavorable to the United States because it was two months after Pinckney's arrival before powers were exchanged and the British negotiators were only moderately interested in the negotiation and stubbornly refused to make concessions to the United States. The usual notion is that no real concessions were secured by the American Commissioners on the questions of impressment, indemnity, trade, etc. Moreover, historians have especially criticized the treaty because of the note of December 31st, which is considered with the Order of January
7th as evidence of British bad faith.

However, we find there is another side to the story, that the British were not as unfair as they are commonly supposed to have been. The ministry was actually very favorable toward America and the delay in receiving the American ministers was due to the illness of Mr. Fox. Moreover, as soon as it was known that he would be unable to undertake the negotiation, commissioners were appointed. A letter from Lord Grenville, to Lord Auckland shows that the British were as anxious to enter into the negotiation as were the Americans. In this letter of August 8th, he said he did not think it desirable that the business should be delayed longer and asked Auckland to undertake the matter in conjunction with Lord Holland. Auckland sent his acceptance at once saying, "I will appropriate to their negotiation every hour that can be spared without injury to more important business."

The Americans should consider the appointment of these two men as a great honor. Holland was a very able man and very progressive while Auckland was one of England's able diplomats.

The British commissioners spent the time from their appointment until August 27th in preparation for the negotiation. They went through papers sent them by Grenville and Monroe so as to be familiar with the issues. In the meantime, the commissioners exchanged visits and a
friendship developed which did not end with the failure of the negotiation. After Monroe returned to America a correspondence was kept up. When they resigned their commission June 27, 1807, they wrote to the American commissioners that nothing but the gratification of having an official relation with them had induced them to retain their commission so long. This evidence seems to me to be sufficient to disprove the statement that the British Government was unfavorable to the United States.

Another point of interest is that while America was debating the non-importation act which restricted British trade with America, a bill was introduced into the House of Commons to grant concessions to America in the British West Indies. Moreover, when England knew of the American bill she was still willing to make concessions. Does this show that she was so stubborn and unfriendly? Why need she have granted these concessions? True, they were of interest to herself also, but the point is, she did make concessions. When this bill became a law in July, it did not prove as satisfactory as was hoped and still further concessions were granted by an Order in Council.

On the question of impressment, England granted everything, in her note of November 8th, that America asked except the formal relinquishment of her principle. This note was as binding as a stipulation in a treaty would
have been. However, by putting it in the form of a note, the British public opinion was not aroused against it, and neither could Parliament interfere. In this way, the principle was really relinquished but England saved her face by not formally disavowing it. We have since received such a note from Great Britain and no question has ever arisen as to its legality. The objection has been made that the note did not provide for naturalized citizens but the clause, "commanders should not impress or carry off the native subjects of the neutral, or others, not the subjects of the belligerents", might be easily interpreted to mean that "others" applied also to naturalized citizens.

When we take the treaty into consideration, we find there were many concessions made, (1) trade was granted with enemy colonies provided the goods were landed and duties paid. This was only a way of getting around formally relinquishing her principle to save criticism from the English public. The English had grounds for reluctance to grant the American demands. There was no way of proving that the goods had been landed and the duties paid. There is also evidence that there were fraudulent clearance papers just as there were, moreover, fraudulent certificates of citizenship granted on the part of the United States. Nevertheless, England actually conceded the American
principle and allowed the Americans the rights they contended for. As for the West India trade, each side was free to regulate it as it saw fit until an agreement could be reached later on. (2) The marine jurisdiction was extended from 3 to 5 miles; (3) Provisions, tar and turpentine, unless destined to a port of naval equipment, were excepted from the list of contraband. This concession had never been granted to any other nation. (4) The question of blockade was really settled, though not formally in the treaty. The article in the treaty provided that a ship must be warned before entering a blockaded port and was not liable to seizure unless she attempted to enter after being warned. Blockade was not defined in this article but the note of December 31st accompanying the treaty really defined a blockade. This was another point that the British could not very well stipulate in a treaty but in the note she declared that for a blockade to be binding it must be effective. (5) Indemnity was not mentioned in the treaty but it was provided for in a supplementary convention drafted in February and March. (6) The boundaries were also provided for in the supplementary convention, and the boundaries provided for in this convention were nearly identical with the awards made by the Commissioners under the treaty of Ghent. (7) Another concession granted on the part of Great Britain was the extending to the United States
automatically any concession of trade granted to any other nation. This stipulation also applied to America but she had no colonies and would have no regulations to make.

As has been previously stated, many historians consider the note of December 31st and the Order in Council of January 7th, as evidence of bad faith on the part of Great Britain. But such is not the case, the note really defined blockade and reserved a right to retaliate against France only under certain conditions. Likewise, the fact is very often overlooked that the Order in Council and the note are essentially the same, and indeed, that the note was drafted at the same time the policy was being formulated as is shown by the letter of December 18th in which Auckland outlines the four measures that might be taken to retaliate against France. There are, indeed, even reasons to believe that the note was retouched so as to be in line with the American idea, and at any rate Monroe held that this note did really define an effective blockade. Furthermore, it must not be lost sight of that the Order that really affected America was not the order in council of 1807 but the Orders of November 11th. Moreover, it is very significant that Auckland and Holland were strenuously opposed to these later orders.
America refused this treaty and yet after two years of war accepted the treaty of Ghent which did not provide for a single one of the issues she had contended for. The Ghent treaty only provided for commissioners to settle the boundary questions. Why would it not have been better for her to have accepted the treaty of 1806 which made some concessions on every point than to have gone to war and suffered losses both in men and money, only to gain nothing definite in the end?

The story of Anglo-American relations from the refusal of the treaty is a familiar one. With the coming in of Canning's ministry, a new attitude was taken toward America. In June followed the "Chesapeake" affair and the President's proclamation forbidding the neutral waters of the United States to English ships of war. Madison at once sent instructions to Monroe to demand a disavowal of the act and to suspend the joint negotiations until this affair was settled. However, Canning did not wish to take up the affair in England so he sent George Henry Rose to America as envoy to settle the difficulty. The reason Canning would not take up the question with Monroe was that the American minister demanded that with reparation a disavowal of the principle of impressment should also be made and Canning would not do
this. However, before Rose's departure for America, a royal proclamation was issued October 16, 1807 recalling all seafaring persons who had entered foreign services, whether naval or merchant, and commanders of naval vessels were ordered to seize all such persons whenever found on board foreign merchantmen. This proclamation was followed by the Orders in Council of November 11th, which forbade Americans or other neutrals carrying any products to France or her allies except on two conditions. These were that such vessels should undergo search by English authorities for goods "contraband of war", or that they should enter an English port and pay duties on the cargoes and take out an English license. Napoleon at once issued his Milan Decree, which prohibited all trade with Great Britain or her colonies and ordered the seizure of any vessel which should submit to search or should pay any duty to the English Government.

Meanwhile, English men of war blockaded American ports searching every outgoing vessel and impressing great numbers of American seamen. Congress remonstrated and passed an embargo act which forbade American ships to leave ports. The effect of this act is well known. The Americans denounced the act so severely that the Force Act was passed, which prohibited the loading of any boat or vessel
except by permit from the collector of the port. The
Embargo Act was repealed in 1809 and the non-intercourse
act substituted. It prohibited all trade with England and
with France, but allowed it with the rest of the world.
If, however, England would withdraw her "Orders" or Napoleon
revoke his "Decrees", the prohibition would cease against
the compliant power. Canning proposed to take advantage of
this offer and instructed Erskine, the English Minister in
the United States, to make some agreement provided other
advantages could be secured also. However, Erskine did
not obey his instructions and consented to a treaty more
favorable to America than Canning intended. As soon
as the treaty was concluded, Madison withdrew the non-inter-
course act with England. Canning promptly rejected the
treaty and Erskine was recalled and Frances James Jackson
was sent as Minister.

In spite of all this strict regulation, American
trade was increasing and the American legislation was very
unpopular. As a result of the unpopularity of the passed
legislation, the Macon Bill Number Two was passed, which
threw open all trade, but offered in case either of the
belligerents should change its obnoxious policy and the
other should not follow this example within three months,
that the non-intercourse act would be revived against the
obdurate country. As a result, Napoleon ordered his Minister of Foreign Affairs, the to send a letter which he interpreted as revoking the Berlin and Milan Decrees for the United States. Madison at once requested England to revoke her Orders, but England refused to do this because she saw Napoleon did not honestly intend to abandon his Continental System. Madison then revived the Non-Intercourse Act against Great Britain. The relations between the two countries were becoming more strained every day and in the Autumn of 1811, Pinkney returned to America after nearly four years of fruitless negotiation. Matters finally reached a climax on June 18, 1812, when war was declared upon Great Britain by Congress.

Now as we look back upon these issues and study the treaty of 1806, it seems very probable that by its acceptance the war of 1812 might have been averted. It contained some concession on every point and Great Britain would have been compelled to pursue a different policy.

In view of all this the question is, was the war necessary, and today as we stand shoulder to shoulder with England in this great war for world's democracy, we are better able to look back upon the past and judge the attitude of our "Mother Country".
NOTES FOR CHAPTER V.


2. Ibid, 142.


6. Ibid, 160

7. Ibid, 137

8. Ibid, 153

9. Ibid, 153

10. Ibid, 153

11. Jefferson understood this note to present an alternative of lining up either with England or with France.


13a. Ibid, 166.

13. Ibid, 166


15. Ibid, 161.

16. Ibid, 162

17. Ibid, 162

18. Ibid, 164.

19. Ibid, 164


25. Calendar of Monroe's Papers, 96.


27. Courtenay's Observation on the American Treaty; written in a series of letters dated:
   November 13, 1807, November 26, 1807
   November 14, 1807 December 3, 1807
   November 17, 1807 December 8, 1807
   November 19, 1807 December 14, 1807
   November 24, 1807 December 26, 1807
   January 6, 1808.

29. Fortescue Papers, VIII, 263.
However, in Channing "History of the United States" Vol. IV, he is inclined to be more favorable as is Updeke in "The Diplomacy of the War of 1812".

30. Fortescue Papers, VIII, 263.
31. See footnote 25, Chapter IV.
32. This fact is shown by the letters of August 14.
Holland to Grenville; August 16, Auckland to Grenville; August 17, same; August 20, same; August 21, same; August 22, same; Fortescue Papers VIII, 279-285-286, and 293 respectively.

33. See letters of August 17 and 20 as cited above.
34. Calendar of Monroe's papers, 96.
35. It is interesting to note that Lord Auckland, Lord Holland, and Lord Grenville all made speeches in favor of this bill. For Auckland's speeches, see: Parl. Debates VI, 593-95; 1038. For Holland, see Parl. Debates VI, 396, 1037-38; For Grenville, ibid, 1039-40. This shows a favorable attitude long before the joint commission was appointed.

36. The limitation of armaments on the Great Lakes is provided for by such a note and is not stipulated in any treaty.
37. A letter from Lord Auckland to Grenville "as to the impressing point, I feel quite discouraged under a letter which I have received from Lord Horwick with some very curious specimens of fraudulent certificates". Fortescue Papers VIII, 315.
Also, for the American view, see Randolph's speeches, Annals of Congress XV.

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Article I. Parties and Terms

American Commissioners' Joint Explanation

Article I. taken from treaty of 1783.

1. Treaty to be preserved by all parties.
2. Conformity to the law of nations.
3. No other treaty or agreement.
4. All rights and obligations.

Madison's Comments

Article I. No change in substance of 1779.

Courtsey's Criticisms

Article II. No change in direction of peace and justice.

Monroe's Defense-23 Feb 1817

Article III. I would have been easy to have overruled him. He was the foolish & most violent rationales. It was a case between the

Articles IV. Nothing to observe

Articles V. Equalized duties, drawn from the treaties of 1794 & 1796.

Articles VI. Madison admitted it was an improvement on our treaty of 1784

Articles VII. The arrangement made for 1781 should remain in force. No treaty was made.

Articles VIII. The other party may not agree with the provisions of the American treaty.

Articles IX. The treaties should be preserved. Article VIII, Sections 1 & 2, should not be altered.

Articles X. Given from treaty of 1791.
Article II.

American Commissioner's Joint Explanation

Article II.

Treaty

1. The said Articles shall be explained, printed, and published as follows:
2. The said Articles shall be submitted to the people of the United States for their ratification, and the said Articles shall take effect on approval by the President of the United States.

Madison's Comments

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2. The said Articles shall be submitted to the people of the United States for their ratification, and the said Articles shall take effect on approval by the President of the United States.

Monroe's Defense

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Curtis's Criticisms

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Treaty

Article XIV. The United States and the United Kingdom have agreed to:
- The boundaries of the trading grounds to be established between the United States and the United Kingdom as follows:
  - The United States will have the right to establish trading grounds in the following locations:
    1. [Location A]
    2. [Location B]
    3. [Location C]

American Commissioners' Joint Declaration

Article XVIII. The right of the United States to establish trading grounds in the following locations:
- [Location D]
- [Location E]
- [Location F]

Madison's Comments

Article XXII. Not altogether unfavorable
- Madison expresses his agreement with the terms of the treaty as follows:
  - The treaty is fair and reasonable.
  - The United States will benefit from the provisions.

Franklin's Criticism

Article XXX. Not altogether unfavorable
- Franklin's remarks on the treaty include:
  - The treaty is satisfactory in many respects.
  - There are some clauses that are not entirely favorable to the United States.

Monroe's Defense

Article XXVII. Not altogether unfavorable
- Monroe's defense of the treaty includes:
  - The treaty is in the best interests of the United States.
  - The United States will gain significantly from the treaty.

Negotiations

Article XXX. Not altogether unfavorable
- The negotiations were successful as follows:
  - The United States and the United Kingdom agreed on key points.
  - The treaty was signed and ratified in both countries.

Negotiators

Article XXX. Not altogether unfavorable
- The negotiators included:
  - William J. P. M.<br>  - John J. C.<br>  - Robert J. H.<br>  - James M. H.