

Mr. ERSKINE'S Arrangement considered in its
Origin, Progress and Issue.

DIFFICULT as the path to permanent peace and reconciliation with Great-Britain, appeared to be with such a temper as that of our administration, before Mr. ERSKINE'S arrangement, that unfortunate measure has not only superadded new embarrassments, but our Ministers appear to be resolved to substitute it as a principal and an insurmountable obstacle.—They not only take credit to themselves for the proof which they pretend that measure afforded of their desire to conciliate Great-Britain—but they adduce the rejection of that agreement, as evidence not merely of infincerity but of perfidy. In their late discussions with Mr. JACKSON, abandoning their cautious policy, and secure as they thought themselves in the confidence of the people, whom they conceived they had managed, they adopted a high and offensive tone ill calculated to reflect a friendly intercourse—they repeated and persisted in direct insinuations of a dishonorable breach of faith, and declared that Great-Britain still persevered insolent and inadmissible pretensions notwithstanding the British envoy as repeatedly in language the most unequivocal, denied that he was directed to persevere in any such pretensions.

Since then, in place of the dispute about the orders in Council, the questions of impressment, of the Colonial trade, and of the Chesapeake, a new cause of contest has been confounded up, to which a still more serious air is attempted to be given. Those of us who are opposed to a war unless it be necessary for our honor, and who think it possible that a set of men who have heretofore deceived us, may deceive us again, will think it prudent to examine to the very foundation, the late arrangement with Mr. ERSKINE, and see, whether it affords any additional just ground for dissatisfaction with Great-Britain, and whether it does not offer new reasons to doubt the sincerity of our government.

Our Ministers appear to place great reliance on the testimony of Mr. ERSKINE, who having once deceived them, and having betrayed an uncommon share of weakness, one would think they would deem little deserving of confidence. For my part I consider this testimony very little relevant to the questions in dispute, unless as it would seem our Administration mean to rely on two grounds, so affrontive to the British Cabinet, as to shut the door forever to Negotiation. Those points are, 1st. That Mr. CANNING fabricated or voluntarily misrepresented the three proposals which in his letter of the 23d of January, 1809, he states, he understood were either proposed by or were acceptable to our Cabinet—and, 2dly. That although Mr. JACKSON in behalf of the British Ministry, solemnly, on the honor of his sovereign, declares that there were no other Instructions on this subject than those contained in the letter of Mr. CANNING of January 23d, yet that in fact other Instructions did exist.

I repeat, and I beg the public to notice it, and weigh the force of the remark, that it would seem that the object and the only object of publishing Mr. ERSKINE'S explanatory letters, is to give rise to two opinions:—That Mr. CANNING voluntarily misrepresented the dispatches of Mr. ERSKINE as to the three conditions;—and that Mr. ERSKINE had other Instructions than those which the British government declare were the only ones.

Now if a war is intended, and is considered desirable or inevitable, it may not be indecent in our government to make such suggestions; but if not, I can see no motive in publishing Mr. ERSKINE'S letters, as they have no possible tendency but to excite unjust suspicions of the integrity of the British Cabinet.

Since however some importance is thus attached to the situation of Mr. ERSKINE, it will be well to consider, his situation and the weight to which his testimony is entitled—I say nothing at present of the manner in which these letters were obtained nor of the suggestion in one of the southern papers that they were first submitted to our Ministers for their approbation, but I do maintain that Mr. ERSKINE'S own interest owing to his misconduct has become identified with the interest of our Cabinet—that he is a party and not a witness—he is a culprit convicted and punished by his own government—whose character as a statesman is completely destroyed in Great-Britain and whose only hope is to reconcile himself to the opposition in his own country, and to the American government and people to whom he is attached by the ties of property and marriage.

Mr. ERSKINE had represented to his own government that our administration were ready to accede to certain propositions—When the authority arrived to close with those proposals, and when he found that the parties with whom he had treated denied or shrunk from the supposed agreement, how natural was it to endeavor to justify himself by qualifying the language he had used to his own government, especially after it was ascertained, that he had nothing further to hope from them, and might calculate on some portion of respect from our country and from the minority in his own.

There was another part of his negotiation which equally tempted him to a representation favorable to the views of our administration.—The violation of the letter and spirit of the Instructions of Mr. CANNING of the 23d of January, was so glaring as to leave no hope of justification either to him or our Ministers.—The only possible excuse was to suggest that there were other Instructions.—His remarks on this head are vague and inexplicit Other Instructions he undoubtedly had previously to this arrangement, because the subjects had been often discussed and had been pending for several years—but all of them had been merged and buried in the orders of January 23d, which alone, as the British government assure us, contained the whole authority on this particular topic.

Let dissembled jealousy exert its utmost powers; it can never persuade an impartial man, that Great-Britain or any other nation in the act of disgracing a minister would dare to allege, that he had violated his instructions and that a particular letter contained the whole of them, when the dis-

graced minister, supported by powerful friends, was possessed of evidence to refute the charge. If such a nation as France who silences the voice of complaint by confinement in the Temple or the Castle of St. Marguerite, could adopt such a course, the thing would be impracticable in Great-Britain against a man of Noble Extraction—the son of a distinguished Peer—a Ci-devant Chancellor—and the most eloquent man in the kingdom.

One other circumstance goes very much against the weight of Mr. ERSKINE'S statements. As soon as the disavowal of his arrangement was known, an apology for him, feeble and defective enough to be sure, was published in the Gazette of the United States. It was soon understood, alleged, and never contradicted to have been written by him.—In that apology, full of censure against his own government, he does not pretend that he had any other Instructions; but he concludes with a threat, that shews he already conceived his own interest to be opposed to that of his government.—The intimation is, that he had settled the difficulties with this country, and that those, meaning his own masters the British Ministers, must look to it who had stirred a hornet's nest about their ears by disavowing his agreement. Such were his feelings before our Government called upon him for his aid in exciting the public resentment against his own country. If from these causes he was biased in his statement, he would not be the first man who has done an unwise thing to prove himself a prophet.

Having made these preliminary remarks, let us now see how this proposal for the withdrawing our non-intercourse laws and the British orders originated. It will not be denied that only six months previous to this event, Great-Britain had peremptorily refused an offer made by Mr. PINKNEY precisely like the agreement of Mr. ERSKINE.—It will not be denied, that the first authority, and as the British Ministry contend, the only authority ever given to Mr. ERSKINE on this subject, was contained in the letter of the 23d of January, which comprised three conditions—1st, That we should continue our laws of Non-intercourse against France and her allies. 2d, That we should relinquish such part of the Colonial Trade as we did not enjoy in time of peace. 3d, That we should by treaty permit the British ships (to do what they would have a right to do without) to capture all our ships contravening this agreement. It will not be denied that neither of these conditions was complied with in the arrangement, and if any other nation had been concerned (but Great-Britain, and especially if we ourselves were (in pari casu) similarly situated, we should entertain no doubt of the right to reject the convention.

But not content with abusing Great-Britain for the exercise of a right rendered sacred by immemorial usage, and still more sacred by reason and justice, an attempt is made to convert these very conditions, these very instructions, into a new offence. It is said they are inadmissible:—It is said they are insolent—that they are an aggravation of previous injury. This might pass if confined to those base journals who have infringed the sacred immunities of a public minister; but they have also found their way into the recesses of the Cabinet.

Now I will meet the whole diplomatic host on this point with confidence. Those instructions convey no insult considering the circumstances under which they were framed.—They were inserted in a solemn letter from Mr. CANNING to Mr. ERSKINE, which he was permitted to shew in extempore. It could not at that time certainly be foreseen that ERSKINE would break his instructions, that a treaty would be formed, and that Great-Britain would be compelled to disavow it. It was addressed to the very man who is said to have written to Mr. CANNING that our ministers had agreed to two of the conditions. It must have been the height of imprudence and folly in Mr. CANNING to have stated to ERSKINE that he so understood him, if he had no authority for so saying. It was ERSKINE'S duty if he found Mr. CANNING had misapprehended him to have withheld the propositions and to have rectified the mistake.

Grant therefore all that ERSKINE and all that our Ministers with so much sophistry endeavor to explain: Grant, which I do not admit, that Mr. ERSKINE misunderstood our Minister as to those conditions; still Mr. CANNING was really deceived. It is impossible, it is against all human probability, that he would have written to Mr. Erskine "that he understood from him that two out of the three conditions were agreed to by our Ministers," unless he verily believed it. There is an end then forever to the pretext of insult in these proposals. They were proper and respectful, because, believed to be our own. As to the third condition, pronounced the most offensive, it is alleged to have been agreed or assented to by Mr. Pinkney, and we see no evidence to counteract or controul this suggestion.

No. IV.

THE ORIGIN, PROGRESS AND ISSUE OF
MR. ERSKINE'S ARRANGEMENT.

WE have already shewn that this famous arrangement originated in several propositions stated by Mr. ERSKINE to be the result of certain conferences with the members of our Cabinet; and that so far from being the cause of new offence, these propositions must have been presumed by Mr. CANNING to have been acceptable to our Ministers. To disprove this point, the members of our Cabinet have assailed the discontented and disgraced minister, Mr. ERSKINE, and have induced him to make some explanatory concessions. These concessions, published by our Government in their own vindication, must according to all fair rules of construction, be considered most strictly against themselves; and we deduce from them most unequivocal proofs, that Mr. CANNING had a right to draw the inferences which he has announced.

Mr. ERSKINE'S letter of the 14th of August is brought forward as the apology of our Government, and as calculated to prove that Mr. CANNING was not authorized to presume that our Government would accede to the three conditions stated in his letter of instructions. The contrary inference may most fairly be drawn from Mr. ERSKINE'S letter. His letter consists of two distinct parts:—

1st. His statement of what he has actually communicated to his own Government. And,

2dly. His declaration of what were his own private impressions, when drawn out by the denial of our ministers.

Upon the first condition, which imported that upon the repeal of the British Orders in Council, we would withdraw our Non-Intercourse as it respected Great-Britain, and persevere in our Non-Intercourse with France and her allies, Mr. ERSKINE states, that Mr. MADISON assured him that "the United States would at once side with that power against the other which might continue its aggressions." Upon being pressed now, after the affair, to explain himself, he says, that he never considered this to be a preliminary condition, because he knew that the President had no such power without the concurrence of Congress.

This, it must be remembered, is Mr. ERSKINE'S private opinion, after the disavowal, and is not stated to have been made known to his Cabinet. This distinction of Mr. ERSKINE, sophistical and absurd enough to be sure is the same which Mr. ERSKINE set up in his own defence in the Gazette of the United States, where he says, that he could not have presumed that a British Minister was so ignorant of the American Constitution to believe that the President had such a power.

This very argument proves, that he never stated this distinction to his own government, but presumed that they would understand it themselves. The whole of this reasoning is however bottomed upon an error; for as the President and Senate have a right to conclude Treaties, which ipso facto become the supreme law of the land, Congress are bound like all other subjects of this country, to carry them into execution.—This principle was settled in the case of JAY'S treaty.

Upon the second condition, Mr. ERSKINE stated to his Government that Mr. GALLATIN said, "that it was the intention of the United States to abandon the attempt to carry on a trade with the Colonies of the belligerents in time of war, which was not allowed in time of peace," and the reason he assigns is conclusive evidence, that he understood Mr. GALLATIN rightly; for he adds, "that the United States would trust their being permitted by France to carry on such trade in time of peace, as to entitle them to a continuance of it in time of war."

This is too plain to require any explanation; it includes the total cession of the colonial trade. This is what Mr. ERSKINE stated to his Government, and on this express idea is Mr. CANNING'S second proposal founded.

Four months after this, and after his disgrace, Mr. ERSKINE declares, that he understood by this, only the direct colonial trade: But this he did not state to Mr. CANNING—and could Mr. CANNING divine it? Might not, indeed did not Mr. CANNING suppose, that as our trade with the colonies of France was reduced by captures of the French Islands, and actual blockade, to almost nothing, that our Cabinet were ready to relinquish it?

Thus it is proved, that the propositions made in Mr. CANNING'S letter of the 23d of January, 1809, so far from being insolent, were in fact founded upon what he had a right to presume were principles to which our ministers had assented; and it is far from being proved that they did not give Mr. ERSKINE reason to believe that they did agree to them.

We shall now proceed to prove that the arrangement entered into with Mr. ERSKINE affords no proof of a walt on the part of our Cabinet to adjust our differences with Great-Britain; but that it was rather expected that it would widen the breach.

1st. There was good reason to believe, at the moment of the arrangement, that he not only acted without full power; but that he had violated his instructions.

This point once established, and it being once conceded that our Government expected a disavowal, it is a proof of great infincerity, instead of a desire of preserving peace.

No point can be more fully settled than that a mere letter of credence, appointing a man a minister resident, or even plenipotentiary does not of itself, include the power to make a treaty. Hence we find that when Ministers plenipotentiary have made treaties, they have exchanged their full powers with the persons appointed to treat with them although they themselves may have been resident at the Court of the sovereign with whom the treaty is made for several years.—(*See Note.)

This principal acquired additional force, and if usage had not sanctioned it the particular circumstances in which Mr. MADISON stood, would have afforded an ample apology for demanding Mr. ERSKINE'S powers. Mr. MADISON is an officer with limited power. This fact foreign nations are supposed, and indeed obliged to know. He was not empowered to restore the Intercourse with Britain, except on the condition of his Britannic Majesty's having actually withdrawn his Orders in Council. He might however, consider his Majesty's promise to withdraw them on a day certain, as tantamount to an actual repeal;—but in such case, he had a right, nay, he was in duty bound, to call for the power of the Minister. Why was it not done? Because it was known, we say not to exist. The delicacy in this case was truly affected. Great-Britain could not have taken offence at the demand of an authority, when that authority was indispensable to the exercise of Mr. MADISON'S power. But the actual conditions of Mr. ERSKINE'S instructions were known; and it was known that the arrangement violated them. This is in proof.

1st. By Mr. ERSKINE'S letter of the 29th April, to his own government, in which he states, that he had discussed the three conditions verbatim et seriatim, that is, word for word, and gives the replies of our Ministers.

2d. By Mr. SMITH'S letter of the 19th Oct. in which he admits that the three conditions, were known to him. And,

3dly. By Mr. ERSKINE'S explanatory letter written at the request of our government, in which he says, "that in the discussions upon these conditions, he found no reason to believe that any difficulties would occur in the accomplishment of the two former conditions as far as it was in the power of the President of the United States to agree to the first, and consistently with the explanation which I had given of the last."

Thus then it seems, the conditions were in fact known; and if there existed public reason, arising from Mr. Mad-