

lowing words. "As however, it is possible, that the delay which must intervene before the actual conclusion of a treaty, may appear to the American government to deprive this arrangement of part of its benefits, I am to authorise you, if the American government should be desirous of acting upon the agreement before it is reduced into a regular form, either by the immediate repeal of the embargo and the other acts in question, or by engaging to repeal them on a particular day, to assure the American government of his majesty's readiness to meet such a disposition, in the manner best calculated to give it immediate effect."

Thus Mr. Erskine is made the sole judge of the extent, and import of his instructions, and if he has been guilty of a departure from them, his sovereign cannot take advantage of that circumstance, so as to work an injury to the other contracting party. But independent of this special power, I contend that the act of Mr. Erskine was strictly within his general letter of credence, and that the British government was bound to perform the agreement, on its part, unless it could be shewn, that fraud and collusion, had been practised between Mr. Erskine, and Mr. Smith the American secretary of state. This I think was manifestly the opinion of Mr. Canning, which I shall attempt to shew from Mr. Jackson's correspondence in the course of my argument. Mr. Canning without doubt knew the law on this subject, and had charged the successor of Mr. Erskine to make out a good case, for the preservation of his majesty's honour.

Permit me now sir to examine what are the established principles of public law, in relation to contracts entered into by proxy. I shall refer in the course of my remarks to several writers on the law of nations, whose authority will not be questioned, and for greater convenience, I propose to give a quotation from each in succession. Puffendorff, page 309—10. Here the principle for which I have contended, is clearly supported. "If any agent be sent with a double commission, one open, to show the person with whom he is to transact, the other secret, prescribing what steps he shall take, and how far he shall proceed; it may be made a question, whether the agent shall oblige his principal if he exceed his private and secret orders, and yet to keep within his open commission where the affirmative side ought to be maintained. For by my own instructions, I bind myself to the third person with whom the contract is made that I will ratify and make good what my agent shall conclude on. And by my *secret orders* I bind my agent not to recede from such positive terms, in which point if he transgress, he stands accountable to me, for so much as I lose by his mismanagement, but I am still tied to perform to the third person, what was thus granted in my name. For otherwise there could be no manner of safety in treating by commissioners, it being ever to be feared, lest their secret directions should differ from their *open powers*, neither could there be a more specious pretence made use of to overthrow all affairs

transacted by treaties. But in the present case that his private instructions were in design." The 194. "When we act for us, as such commissioners give some private order we would then to act contrary to what we allow which he makes wanting. For an agent, which is the party to whom such agent does instructions which are not known to them; they cannot make a promise is made appears to him and full consent collusion, between their power at promises thus

I trust sir, the conduct of the British minister violated his full power. I conclude an agent's vation to suspend Mr. Canning's land of such a necessity to relieve before important the fulfilment prevent delay the enlargement

But whether the letter of credence was bound by what he had violated his known and obvious directions any gentleman which the very questioned, whether