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CONGRESS.

HOUSE OF REPRESENTATIVES.

TUESDAY, Oct. 25.

DEBATE ON THE LOUISIANA TREATY.

(Continued.)

MR. RODNEY said, that in the observations he rose to make at that late hour, he should be brief, and apply them entirely to the constitutional question as it was scarcely contended the bargain was not a good one. In making them he cordially joined with the gentleman from Connecticut (Mr. Griswold) when he expressed his wish that the discussion should be conducted with coolness and temper. It was not only the duty, but the interest of every gentleman on the floor that this important subject should be decided on argument, and argument alone. He felt the force of the objection urged by the gentleman from Maryland (Mr. Nicholson) that the discussion of some of the points, was premature; he should, however, enter into a brief exposition of them.

It is contended that the United States have no right to purchase territory; that they have no right to admit the people of Louisiana to a participation of the rights derived from an admission into the union: and that a peculiar favor is about being granted to the ports of New-Orleans in violation of the Constitution.

In the view of the Constitution the union was composed of two corporate bodies; of states and territories. A recurrence to the Constitution will shew that it is predicated on the principle of the United States acquiring territory either by war, treaty, or purchase. There was one part of that instrument within whose capacious grasp all these modes of acquisition were embraced. By the Constitution Congress have power to "lay and collect taxes, duties, imports, and excises, to pay the debts and provide for the common defence and general welfare of the United States."—*To provide for the general welfare.*—The import of these terms is very comprehensive indeed. If this general delegation of authority be not at variance with other particular powers specially granted, nor restricted by them; it it be not in any degree comprehended in those subsequently delegated, I cannot, said Mr. R. perceive why, within the fair meaning of this general provision is not included the power of increasing our territory, if necessary for the *general welfare*, or *common defence*. Suppose, for instance, that Great Britain should propose to cede to us the Island of New-Providence, so long the seat of pirates preying upon our commerce and the hive from which they have swarmed, will any gentleman say that we ought not to embrace the opportunity presented, as a defence against further depredations? Suppose the Cape of Good Hope, where our East-India men so generally stop, were offered to be ceded to us by the nation to which it belongs; and that nation should say, on our possessing it, you shall declare it a free port. Is there any member who hears me that could contend that we were not authorised to receive it, notwithstanding the great advantages it would insure to us?

But it appears to me, independently of this provision of the Constitution, and the gentleman from Connecticut (Mr. Griswold) admits it, that according to the rights of war, we may extend our territory. An enemy might come within our lines, and we expel him: our lines not being the limits to which our arms would be confined, we could pass them, and take possession of the enemy's country, and thereby undoubtedly acquire a right to the territory occupied. For in the Constitution it is expressly said that Congress shall have power "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water"—and among the *jura bella* was clearly recognised the right of annexing territory. But there is one article of the Constitution which is predicated on the right to purchase territory. We have a right to obtain territory by purchase from a state. In the provision made in the Constitution respecting the territory of the United States, we find that Congress are invested with power, "to exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings."—Here then is given to Congress exclusive legislation over particular places, over the ten miles square, and over such places as they may purchase. This provision is expressly predicated on the right to purchase, and only limits that purchase by the consent of the states. If Congress have the right of purchasing territory from a state, how can gentlemen contend that they have not the right of purchasing territory elsewhere, if in their judgment they shall consider it well calculated to subserve the great interests of the Union.

It does appear to me that the right of acquiring territory must be included in the treaty making power; as there are very few treaties, which are not merely commercial, that do not change the property belonging to nations. And if this prinsipal power be contained in the treaty making provision, every incidental power, is of consequence to be considered as fairly embraced within it, and I should deem this important authority as nugatory, if it did not give the President and Senate the right to accept a cession of territory. It is certainly not the right of the President and Senate to make such a cession conclusively binding; when it shall embrace powers within the pale of those delegated to this House, it will require our sanction. Have we not also vested in us every power necessary for carrying such a treaty into effect, in the words of the constitution, which gives Congress the authority to "make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof." It, therefore, appears very clearly to my mind, that, according to the constitution, the United States have a right to acquire territory. If they possess this right according to the constitution, this measure cannot be said to be unconstitutional, and it not unconstitutional, as the gentlemen who have spoken against it, did not insist upon the point of inexpediency, some of them because they believed that ground was not open, and others because it was not tenable, will ultimately give it their support.

But another constitutional objection is stated. Though the United States may acquire a valid title to the territory, the hills and the groves, the rivers and the lakes, it is alleged that they have no right to bring the persons inhabiting it, into a state in which they shall enjoy the blessings of free government. My friend from Maryland (Mr. Nicholson) has observed that the article of the treaty relating to this object is most cautiously worded. If ever there was a precision of language calculated to avoid the imputation of an invasion of the constitution it is the language of this article. Its words are:

"The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

How are these people to be admitted? According to the principles of the federal constitution. Is it an open violation of any part of the constitution? No, an express reservation is made by those who formed the treaty, that they must be admitted under the constitution. Now if admitted agreeably to the constitution, it cannot be said to be in violation of it; and if not in violation of it, the fears of gentlemen are groundless.

But as I observed before, does not the constitution refer to territory? Do not the United States possess territories now? Is the possession of territory confined by the constitution to those they now hold? I believe not; for in the constitution it is stated that "Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States." Here is a clear recognition of territory belonging to the United States, and not merely of territory then held, but of territory which might futurely be acquired by treaty or purchase. And if this territory be ceded to the United States, Congress have power, as soon as ceded, to make rules and regulations respecting it.

There is another sound answer to the objections of gentlemen. This is property ceded to us by the power ceding it with a particular reservation. I am not for quibbling about words or distorting terms. Taking the 7th article, and fairly considering it, it amounts to nothing more than a particular reservation; upon *delivering possession of the territory* which I take to be the true meaning of the language which is used; and will any gentleman say that accepting the treaty, under this stipulation, will not be most advantageous to us? What individual state will be affected by it more than any other? Does it give the state of Massachusetts an advantage over N. York? I would be glad to know what state it particularly affects, and in what way? "No preference," says the constitution, "shall be given by any regulation of commerce or revenue to the ports of one state over those of another." In what way, under this treaty, is there any preference of one port over another? I would be glad to see it pointed out, and to be shewn whether there is any preference of Delaware over Massachusetts, or of Virginia over Georgia. No. The constitution adverts to *states* themselves; and the distinction between *states* and *territories* is bottomed upon reason. Whence the necessity of the distinction? When territories grow into states, and become represented in the public councils, a majority of them may league together, and carry into effect regulations prejudicial to other states. Hence the constitution provides that in all commercial regulations all the states shall be equally affected. But such a league cannot be effected by territories, which have no Senators in the other branch, and in this only the voice, without the vote, of a single delegate. Independent of this consideration is this; if by any particular territorial regulation the territory of the United States is benefitted, that territory being the common property of the United States, a public stock in which they all share, every state in the union reaps alike the benefit.

These are my reasons for considering this measure perfectly constitutional. I might dwell upon other reasons corroborative of this conviction; but these have been so ably enforced by my friends from Virginia and Maryland, and by other gentlemen as to render more remarks superfluous. I cannot, however, avoid noticing the observation made yesterday and reiterated to day that we do not know whether we have a title to this territory, or whether it be not the purchase of so many acres of mere moonshine. I voted yesterday for some papers because I wished beyond all cavil or dispute to establish the constitutional right of this House to call for papers, and from a respect to the opinions of some gentlemen who considered them important, not from any doubts of my own as to the validity of the title. The publicity of the cession of Louisiana by Spain, its former owner, to France, is too notorious, it has been noticed, dilated on and recognised in the British parliament, and in the senate of the United States. We have not in our possession, it is true, the original treaty of St. Ildefonso, nor the subsequent one, concluded between France and Spain at Madrid, which referred to the former, for we were not furnished with duplicates of either, nor have we the testimony of the king of Etruria to prove that every stipulation contained in them, was strictly complied with, poor man he is no more. We have not sent a commissioner to Madrid or St. Cloud to take the examination of the ministers of Spain and France, to obtain their evidence in order to verify the fact, of all conditions having been performed by France on her part; but we have seen in the papers which record the transactions of the times, the arrival of a French Prefect of Louisiana at New Orleans announced. We have read his proclamation to the inhabitants of that country informing them of the cession and, if I mistake not, our own government has received through the proper channel intelligence of the same event, which has been duly published. All these circumstances combined are satisfactory to my mind on this subject. No fact in the history of nations can be more rationally proven, and gentlemen should recollect that they rely on the same kind of testimony (the letter of Mr. King to the answer of lord Hawkesbury) when they confess themselves satisfied that England is agreed to this measure.

I would further observe from the course which the debate has taken, that if we had all the papers and documents, which the gentlemen desire, agreeably to the mode of argument which they have adopted, they might object to passing the necessary laws, until we had got possession of the country and at the same time object to our taking possession, without laws to authorize it. By thus arguing in a circle as the logicians term it, they would most effectually defeat an object of the first importance to the community, and render the acquisition of an inestimable territory, of as little value as the same extent of moon-shine or star light. With these impressions, believing the measure a good one and consistent with the constitution, I shall most cheerfully give my vote for carrying it into effect.

DR. MITCHILL rose, and said, he entreated the indulgence of the committee, for rising at so late a stage of the debate, when seven hours have already been employed in the sitting of the day. And the reason of his request was, that such extraordinary doctrines have been advanced against carrying into effect the treaty with France which cedes Louisiana to our nation, and such repeated allusions have been made to the sentiments which he submitted to the House during the debate of yesterday, that he felt himself called upon to attempt a reply, and therein to show that the grounds taken by the gentlemen of the opposition are neither strong nor tenable. Although the subject is ample and copious, he should endeavor to condense his remarks, to so moderate a compass, as not to trespass long upon the patience of the committee.

My colleague, said Mr. M. who opened the debate this morning, (Mr. G. Griswold) displayed in his speech the objections raised against the resolution on the table, so fully that he almost exhausted the subject. For in listening attentively to the reasoning of the gentleman from Virginia, who followed him (Mr. J. Lewis) and of the other gentleman from Virginia who spoke next (Mr. Griffin,) he could not discern that any new or additional matter of much consequence had been urged. Nor did he discover much more than a repetition in substance of his colleague's reasoning, in what had been urged by the gentleman from Massachusetts (Mr. Thatcher), and the gentleman from Connecticut (Mr. R. Griswold); though the statement of their objections had received a form and coloring diversified according to the skill and ingenuity of each.

In the reply which he should make to the gentleman in opposition to the appropriations for carrying the treaty into operation, he should not examine their arguments severally as they had been brought forward in the course of the debate. That mode would necessarily lead him into tedious and needless repetition. He should therefore endeavor to reduce all the arguments he had heard from the other side of the House into their elementary propositions, and having done so, to shew that they were weak in their nature and wrong in their direction. And even this view of the question would be much circumscribed, on account of the strong and masterly manner in which a part of the objections had been already repelled by his eloquent friend from Virginia, (Mr. J. Randolph) and by the impressive remarks of his other friend from Delaware (Mr. Rodney).

The gentlemen, Mr. Chairman, who resist the provisions necessary to the completion of this treaty, do so because they say it has been ratified by the President and Senate in open violation of the constitution of the United States, and is therefore no treaty, but a nullity, an instrument void *abinitio*, not a part of the supreme law of the land, and consequently not binding upon Congress or the nation. They draw this bold and extraordinary conclusion from the style and meaning of the 3rd and 7th articles of the treaty. The former of these, they say, is unconstitutional, because it proposes to annex a new territory, with its inhabitants, to our present dominion; and the latter, because it abolishes for a term of years the discriminating duties of tonnage and impost within the ceded territory, giving a preference there to France and Spain, and leaving those duties unaltered in all the ports of the union.

By the 3d article, it is agreed that the inhabitants of the ceded territory shall be incorporated into the union of the United States as soon as possible, according to the principles of the federal constitution, and be admitted to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property and the religion which they profess.

On expounding this article, my colleague has declared that the President and Senate have no power to acquire new territory by treaty, and he argues that our people are to be forever confined to their present limits. This is an assertion directly contrary to the powers inherent in independent nations, and contradictory to the frequent and allowed exercise of that power in our own nation. We are constantly in the practice of receiving territory by cession from the Red Men of the west, the aborigines of our country. The very treaty mentioned in the President's message with the Kaskaskias Indians whereby we have acquired a large extent of land, would, according to this doctrine, be unconstitutional: and so would all the treaties which add to the size of our statute book, with the numerous tribes of the natives on our frontiers. According to this construction, all our negociations so happily concluded with those people, whom we ever have uniformly acknowledged as the sovereigns of the soil, are nugatory, and to be holden for nought. He said, he was perfectly aware of the answer which would be made, that we held all our national domain, under G. Britain, by virtue of the treaty concluded at Paris in 1783. What, after all, was the amount of that cession by England? Certainly not a conveyance of a country which never was theirs, but rightfully belonged to the Indian natives; for it was in its true construction, merely a *quit claim* of the pretensions or title to the land which the English had obtained by conquest and treaty from the French. By that negociation, the United States obtained a bare *relinquishment* of the claims and possessions of those two powerful nations. But the paramount title of the original inhabitants was not affected by this. However contemptuously the rights of these rude and feeble tribes had been regarded by the Europeans, their descendants in these states had considered them with recognition and respect. Until the Indians sold their lands for an equivalent, the humane and just principles of the American government acknowledged them to be the only legitimate owners. And the sovereignty acquired by treaty or purchase to our government was derived from the title which the natives transferred to them as grantees in a fair bargain and sale. Such, Mr. M. argued, were the rules of true construction, and these rules admitted and acted upon by the federal government; and yet according to the novel doctrine of this day, every treaty with the natives for parcels of their country, although hitherto deemed lawful, would be an unconstitutional act. According to this notion, every treaty for lands, holden with the aborigines since the organization of the government, was a violation of the constitution. And thus this invaluable instrument, this bulwark of our liberties, had been violated perhaps twenty times or more, since we began to buy the surplusage of their hunting grounds. The Indian tribes are as much aliens as any other foreign nations. Their lands are as much foreign dominion as the soil of France or Spain. Yet we have gone on to annex the territories which they sold us, to our present territory, from the time we acquired independence, and no mortal, until this debate arose, Mr. Chairman, has so much as thought that thereby a breach of the constitution was made. My colleague is fairly entitled to great credit for his perspicuity in finding out that all our great and wise predecessors in administering this government, have been blunderers and constitution-breakers. But, Sir, the just judgment on this subject is, that the Presidents and Senates of the United States have heretofore acted constitutionally in acquiring by purchase foreign dominion from the alien Indians. And by parity of reasoning, they have acted not only constitutionally, but eminently for the interest of the country, in buying Louisiana from the Whitemen, its present sovereigns.

But independent of correct principle and steady precedent in favor of the acquirement of new territory, it may be worth the while to mention a few of the strange consequences which flow from the doctrine which the gentlemen of the other side of the House contend for. According to their reasoning, if by any force of the currents of the ocean, or any conflicts of the winds and the waves, a new surface of earth should emerge from the neighbourhood of Cape Hatteras, it would be unconstitutional to take possession of it. Yet it appears to me, Sir, very like an absurdity to say, the United States would break their bond of union by erecting a light-house on it. Suppose that by volcanic action, islands should be suddenly elevated from the bottom of the neighbouring Atlantic, as they have repeatedly risen from the