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CONGRESS.

Debate in the SENATE, on the LOUISIANA TREATY.

Thursday, November 3.

(Continued.)

Mr. Wright—Mr. President—I presumed from the observations of the honorable gentleman from Delaware (Mr. Wells), that he had not minutely attended to the provisions of this bill, on which the transfer of this stock is made expressly to depend—The treaty has in the most guarded manner secured us in the *possession* of the ceded territory, as a *condition precedent* the payment of the purchase money, and this bill has expressly provided that no part of the stock shall be transferred till the *possession stipulated by the treaty* shall have been obtained—Not such a possession as the gentleman has said the President *may* be satisfied with—"the delivery of a Twig and Turf, or the knocker of a door."—The treaty has defied the possession intended, it is the possession of Louisiana, the Island and City of New-Orleans, with the forts and arsenals, the troops having been withdrawn from thence—But Sir, from his remarks it would seem that his objections to this bill had been predicated on his want of confidence in the Executive, as he has expressed his fears that the stock would be transferred, before the pre-requisite conditions had been performed.—He says, *we* ought to be satisfied that the possession stipulated by the treaty shall have been delivered up before we pass this bill. Has he forgot that by the constitution the President is to superintend the execution of the law? Or has he forgot that treaties are the supreme law of the land? Or why, while he *professes* to respect this constitution, does he oppose the commission of the execution of this law, to that organ of the government to which it has been assigned by the constitution? Why, I ask, does he distrust the President? Has he not been throughout the whole of this business very much alive to the *peaceful* acquisition of this immense territory, and the invaluable waters of the Mississippi? A property, which, but the other day, we were told was all important, and so necessary to our political existence, that if it was not obtained, the Western people would sever themselves from the union. This property, for which countless millions were then proposed to be expended, and the best blood of our citizens to be shed, and which then was to be had at all hazard, *per fas aut per nefas*, seems now to have lost its worth, and it would seem as if some gentlemen could not be satisfied with the purchase, because our title was not recorded in the blood of its inhabitants; but that this is not the wish of the American people, has been unequivocally declared by their immediate representatives in congress, as well as by this house, who had each expressed their approbation of the *peaceful* title we had acquired, by majorities I thought not to be misunderstood—and the gentleman, although he voted for the ratification of the treaty, now again calls on us to investigate the title, it is certainly too late. But I ask, if *he* was not possessed of the most satisfactory evidence of the title, why he consented to the ratification of the treaty? Does he not know that France, the original proprietor, ceded it to Spain? Does he not know that Spain retroceded it to France, in exchange for Tuscany, which is now held as the kingdom of Etruria, by the king of Etruria, the relative of his Catholic majesty, by virtue of that exchange—does he not know that Spain disclaims all title to it, and has issued the royal order for delivering it to France under its original limits, and that that order was lately in the possession of the minister of the French Republic, near the United States. That the treaties had been ratified and exchanged for the sale of Louisiana to the United States, and that the minister of the First Consul had concerted with our government, such measures as were deemed necessary to put us in possession of the ceded territory, agreeably to the treaty. How correct then, it may be to investigate the title after we have ratified the treaty, and become thereby the purchasers, or how prudent to question that title, when claiming under it, are questions the gentleman's own feelings will best decide! But of this I am sure, that we can have no just cause of complaint against the French Republic, until an eviction under a pre-existing title paramount, which Spain herself disclaims. But if after we shall be in possession, under this peaceful, this legitimate title, any power on earth shall attempt to disturb our possession, I trust we can obtain injunctions from our secretaries of war, and of the navy, and secure our title in the way it was wished by some gentlemen to have been originally obtained. The gentleman tells us he understands we are to be opposed by the subjects of his Catholic Majesty, in taking possession of the ceded territory, or why send so many troops to take possession. I cannot tell where the gentleman got his information, either as to the opposition intended, or the number of troops to be sent. *I* have never heard there was to be any opposition, but the reverse. I have never heard the number of troops that are intended to take possession—But I hope and trust a number sufficient to preserve the forts in good order, and to defend them against any power that may presume to invest them. This, I have no doubt, will be done, as it is committed to the President, under his high responsibility, aided by the heads of the departments, to which it belongs, who will be possessed of all necessary information, and who will, I trust, do their duty in preserving and defending these important posts.

Can it be supposed that the Louisianians, who so lately gave so demonstrative proof of their loyalty in their answer to the address of the Prefect of France, will be less disposed to loyalty to the United States, when they recollect that we have treated them as our children, and ourselves by securing them in their property and in their civil and religious liberty, agreeably to the principles of our own constitution? Can they be so unwise as to prefer being the colonists of a distant European power, to being members of this immense empire with all the privileges of American citizens? Can any gentleman seriously entertain such an unauthorised opinion that that people whom we have seen so lately with so much respect to their late King, submit cheerfully to be citizens of the French Republic, will now in direct violation of the Royal Order, refuse to obey it, and treasonably take up arms to resist its execution—it is as cruel as it is unfounded? But should an infatuation, so treasonable, beget in them insurgent principles of resistance, I hope and trust that our troops on the spot may be permitted to aid the officers of his Catholic Majesty to reduce them to reason and submission to the Royal Order of their King, that they may be delivered up to be brought to condign punishment; and that their treasonable project may be nipped in the bud.

I had for myself, however, supposed that from the time of the address of the French Prefect he had been in possession of & in the discharge of the civil functions of the government, and that the Spanish troops in the forts held the possession of them to preserve and protect them till the French troops should arrive under his direction; but I never did suppose that after the First Consul consented to sell that country, that he would send over his troops to take possession of it, but to surrender it; nor did I ever entertain a single doubt that after the King of Spain had sold that property to France and *secured* and *held* the property in exchange of which his Royal Order for the delivery of the possession was full proof, that if it was not in his power to induce the First Consul to keep it, that he would commit that integrity hitherto unsullied, by any measures violative of the faith of his own treaty.

Mr. PICKERING said, if he entertained the opinion just now expressed by the gentleman from Delaware, (Mr. Wells) of the binding force of all treaties made by the President and Senate, he should think it to be his duty to vote for the bill now under consideration. "The constitution, and the laws of the United States made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land." But a treaty to be thus obligatory must not contravene the constitution, nor contain any stipulations which transcend the powers therein given to the President and Senate. The treaty between the United States and the French Republic, professing to cede Louisiana to the United States, appeared to him to contain such an exceptionable stipulation—a stipulation which cannot be executed by any authority now existing. It is declared in the third article, that "the inhabitants of the ceded territory, shall be incorporated in the Union of the United States." But neither the President and Senate, nor the President and Congress are competent to such an act of incorporation. He believed, that our *administration* admitted that this incorporation could not be effected without an amendment of the constitution. And he conceived that this necessary amendment could not be made in the ordinary mode, by the concurrence of two thirds of both Houses of Congress, and the ratification by the legislatures of three-fourths of the several states. He believed the assent of each individual state to be necessary for the admission of a foreign country as an associate in the union: in like manner as in a commercial house, the consent of each member would be necessary, to admit a new partner into the company. And whether the assent of every state to such an indispensible amendment were attainable, was uncertain. But the articles of a treaty were necessarily related to each other; the stipulation in one article being the consideration for another. If, therefore, in respect to the Louisiana treaty, the United States fail to execute, and within a reasonable time, the engagement in the third article, (to incorporate that territory into the union) the French government will have a right to declare the whole treaty void. We must then abandon the country, or go to war to maintain our possession. But, it was *to prevent war* that the pacific measures of the last winter were adopted—they were to "lay the foundation for future peace."

Mr. Pickering had never doubted the right of the United States to acquire new territory, either by purchase or by conquest; and to govern the territory so acquired, as a dependent province. And in this way might Louisiana have become a territory of the United States, and have received a form of government infinitely preferable to that to which its inhabitants are now subject.

There was another serious objection to this treaty. It purported to contain a cession of Louisiana to the United States. The first article had often been read and commented upon; yet he begged leave to refer to it once more. It was therein stated, that by the 3rd article of the treaty of St. Ildefonso, made the first of October, 1800, he, king of Spain *promised* and *engaged on certain conditions*, "to cede to the French republic, the colony or province of Louisiana, with the same extent that it then had in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and other States."—Now, under this *mere conditional promise* of Spain, the First Consul (declaring that the French republic had thereby an incontestible title to the country) undertakes to cede Louisiana to the United States: And how does he cede it?—"in the same manner as it had been acquired by the French republic, in virtue of the above mentioned treaty with Spain."—That is, by that treaty, France acquired a right to *demand* an *actual cession* of the territory, provided she fulfilled *all the conditions* on which Spain promised to cede. But we know Spain declares that those conditions have not been fully performed; and, by her remonstrances, warns the United States not to touch Louisiana. Now we, standing (as some gentlemen have expressed themselves) in the shoes of France, can have only the same right relative to the subject in question: We can ask of Spain an actual cession, or a *confirmation* of the claim we have purchased of the French republic, provided we will and can fulfil the conditions of the treaty of St. Ildefonso. And *what are these conditions?* We cannot tell. Mr. P. believed that our executive knew not what they were; and he believed, too, that even our envoys, who negociated the treaty for Louisiana, were alike uninformed: He believed that they never saw (for they had not intimated that they had ever seen) any other part of the treaty of St. Ildefonso, than what is recited in the first article of our treaty with France. And this defect has not been supplied by any guarantee of the territory on the part of France. She had not stipulated, nor is under any obligation, to procure the assent of Spain, as a confirmation of the cession to the United States.

Such is the nature of our title to Louisiana. We had, indeed, been told of a publication, long since made at New Orleans, of the King of Spain's order to his officers there, to deliver possession of the province to the French republic. Mr. P. also would take the liberty of mentioning what he had heard, and from good authority;—that the Prince of Peace, more than a year subsequent to the treaty of St. Ildefonso, declared, *that the king of Spain (his master) had not ceded Louisiana to France.*

Another honorable gentleman has entertained us with an account of the animating address of the French Prefect to the inhabitants of Louisiana, the largest portion of whom are French; and of the cordiality with which they received, and echoed, in their answer, the sentiments of the Prefect.—But what were the feelings and conduct of the Spanish officers, on seeing these French proceedings? Mr. P. had heard from an honorable member in his eye [Mr. Dayton]. They sent for the printer, and forbade all further promulgation of the address and answer, on pain of his being sent to the dungeon, or to the mines, for life.—Thus tenacious was Spain of her right to Louisiana, and thus severe in her prohibition of whatever might disparage her title.

But gentlemen rely on the royal order, now in the hands of the French agent here, for the delivery of the possession of Louisiana to the French republic: They seem to consider it as full evidence of the cession of that territory to France; and as supplying all apparent defect of title under the treaty of St. Ildefonso;—that order (said Mr. P.) is a year old. Before that time France had concluded a peace with Great Britain; and whatever the French government should demand of Spain, would be given.

It is likewise supposed that the Spanish officers in Louisiana will not dare to refuse obedience to that order: and one gentleman has expressed his opinion, in case such refusal should happen, that the American troops, whom the President should send thither, would be justified in compelling them to obey.—But what if a subsequent royal order has been issued, requiring those officers *not to deliver up Louisiana to France, or to the United States?* We have some reason to think that such is the fact. And resistance, he presumed, was apprehended. Why, else, all this parade of war? Why had the President been authorised to employ the army and navy of the United States, and to call forth any portion of eighty thousand militia? Honorable gentlemen, he knew, held cheap the power of Spain: they have spoken plainly their opinion of her feebleness and inability to withstand the force of the United States: And have seemed to rest the security of our title (as he remarked on a former occasion) rather on that feebleness and inability, than on the validity of the cession from the French republic. And one honorable gentleman has said, that Spain will be left alone;—that the French republic is *bound in honor* not to give her any aid. The French Republic bound in *honor*? For ten or fifteen years past, we had known too well what were the *honor* and the *justice* of the government of that republic.

Perhaps Spain may not resist at the present moment: She may wait until France gets the war with Britain off her hands. Then pretences will be easily found to reclaim Louisiana; and Spain, once engaged to wrest it from us by force, will receive from France, her ally, all necessary aid. Mr. P. believed that this whole transaction had purposely been wrapt in obscurity by the French government. The boundary of Louisiana, for instance, on the side of Florida was, in the treaty, really unintelligible; and yet nothing was more easy to define. The French government, however, would find no difficulty in the construction. And an honorable member from New-Jersey, (Mr. Dayton) had informed us, that the French prefect, at New-Orleans, told him, that as soon as general Victor should arrive, with the French troops, he should extend Louisiana far into West Florida.

Mr. P. said, that which ever way he turned his eyes, war was in prospect, as the final result of our pacific measures—measures deemed so wise as to have been ascribed to divine inspiration! He wished they might merit that high character; but feared, in the end, they would bear the stamp of indiscretion—perhaps of folly.

Mr. DAYTON.—As the honorable gentleman from Massachusetts has quoted what was suggested by me in a former debate to deduce from it an inference which the information I gave can by no means warrant, I must be allowed the liberty of correcting him. When I said that there existed an essential difference between the French and Spanish officers at New Orleans as to the real boundaries of the province of Louisiana, I did not mean to insinuate that this disagreement extended so far as an opposition to the French taking possession. It was a question of limits only, varying however so much in extent, as would have produced a serious altercation between those two countries, although closely allied.

The Spanish governor had taken it upon himself to proclaim that the province lately ceded and about to be given over to France would be confined on the East of the Mississippi to the river Iberville, and the lakes Maurepas and Pontchartrain, or in other words to the island of New-Orleans; but the French Prefect on the contrary declared that he neither had nor would give his assent to the establishment of those limits, which would be regarded no longer than until the arrival of their troops.

The same gentleman (Mr. Pickering) has said that the advocates of this measure seem to rely much more upon their power than upon their right, and in this assertion I am compelled to say he has done us very great injustice. The title of the French is founded upon the often quoted treaty of St. Ildefonso, confirmed by the Royal Order signed by the King of Spain himself, so lately as the 15th October 1802, directing the delivery of the "colony of Louisiana and its dependencies as well as of the city and island of New-Orleans, without any exception, to general Victor, or other officer duly authorised by that Republic to take charge of the said delivery."

When at New-Orleans in July last, I obtained from the best source, a translated copy of that Royal Order, and can aver that it absolutely directs possession to be given without reservation or condition. It is not, and cannot be denied that the lately ratified treaty of Paris transfers to us completely all the title acquired by France in virtue of the first treaty and order alluded to. We have then most incontestibly the right of possession, and our object now is by passing the bill before us to obtain the possession itself, which we can certainly never effect, consistently with good faith, if the reasonings and objections of my honorable friends from Delaware and Massachusetts should prevail. We are asked by the same gentlemen what will be the consequence if it shall appear, that the Royal Order has been revoked? I answer first that it is not in the least degree probable, for neither of them pretend to have heard of such revocation, nor is it intimated in the confidential communications before the Senate. But admitting for argument' sake that it were revoked, of what avail could it be against a third party who had in the mean time become a *bona fide* purchaser. Shall one nation give to another a written, formal evidence of transfer of territory, and revoke it at pleasure, especially after a third shall have been tempted and induced by that very evidence of title to contract for the purchase of it. Would an act so fraudulent be countenanced between individuals in a court of equity? Could it be justified between nations in a high court of honor? The honorable gentleman from Delaware has taken a more delicate ground of objection. He has insinuated that there exists in the knowledge of the Senate, the evidence of a serious opposition to our possessing that country, which if known to the other branch of the legislature would probably have defeated this bill in its progress there. Allusions artfully made in this manner to documents communicated under the injunction of secrecy, place us in an embarrassing situation. Forbidden by our rules to expose the papers referred to, even in argument, we can only declare what impressions they have made upon ourselves. Every Senator must understand him, every one must have heard and read and weighed deliberately the contents of those documents, and for myself I am free to avow my belief that if known to every member of the other House they would have had no effect against this bill, but would rather have quickened and ensured its progress, for such is the influence they have upon me.

The same gentleman goes on to say that our own government undoubtedly expects to meet with opposition and to be compelled to use violence, instead of receiving peaceable possession, or why should it send there so imposing a force. From what source that hon. gentleman has acquired a knowledge of the number of troops ordered down the river, he does not tell us, nor indeed how many he means when he calls the force an imposing one. If in times of peace and profound tranquility the Spaniards have found it prudent to keep there constantly, at least four or five hundred troops, could we be justified in sending no greater number when so important an act is about to be performed as the transfer of an extensive territory with the posts connected with it, and this too before we can have had