NATIONAL INTELLIGENCER,

AND

WASHINGTON ADVERTISER.

VOL. V. | WASHINGTON CITY, PRINTED BY SAMUEL HARRISON SMITH, PENNSYLVANIA AVENUE. | NO. DCLXVIII.

FIVE DOLLARS PER ANNUM. | FRIDAY, JANUARY 18th, 1805. | PAID IN ADVANCE.

Congressional Register.

HOUSE OF REPRESENTATIVES.

MONDAY, JANUARY 7.

Debate on receding the District of Columbia.
[Continued.]

MR. EPPES. With the gentleman from Pennsylvania (Mr. Smilie) considered the question of receding the territory of Columbia as entirely separate and distinct from a question to remove the seat of government. He did not understand the particular connection between the two questions. He believed that the seat of government would be as permanently fixed here, if the jurisdiction of Congress extended only over the soil covered by its public buildings, as if it embraced any given number of square miles. All that the national legislature wants here is accommodation. Assembled at this place for purposes of general legislation, the exercise of a local sovereignty over a few square miles is neither beneficial to the nation nor interesting to Congress. The right of legislating for persons around us whose local interests we do not feel, or understand, cannot attach to this spot the representatives of the nation. The exercise of this power by Congress cannot attach to this spot the nation itself. The public convenience and interest fixed our government within this territory,—the public convenience and interest can alone continue it here. The permanent seat of our government depends not on the extent of our powers over the country around us, but on the will of the nation. Whatever might be the feelings of other gentlemen on this subject, he had no hesitation in declaring, that although he was in favour of receding the territory of Columbia, he should never feel himself authorised as a representative of Virginia to vote for a removal of the seat of government.

In the observations he should make on this subject he was willing to pursue the course taken by the gentleman from Maryland (Mr. Dennis) who had set out with declaring, that he considered receding the territory, as unconstitutional, and impolitic. He would examine these two questions, and first the constitutional right of Congress to recede the territory. If the words of the constitution were, that Congress *shall* exercise exclusive legislation over the territory, there would be no doubt but that like every other part of the constitution they must be obeyed. Whatever inconvenience might attend the exercise of this power by Congress, if by the words of the constitution it was positively enjoined as a duty, we could not shrink from its performance. The words of the constitution are, that Congress "shall have power to exercise exclusive legislation in all cases whatsoever, over such district of country, not exceeding ten miles square, as may by cession of particular states become the seat of the government of the United States." What do we understand by the words shall have power to exercise? Not that Congress shall; but that Congress may, exercise exclusive legislation over this district, precisely as she may exercise any other of her delegated powers. By the first clause of the eighth section of the first article of the constitution, Congress shall have power to lay and collect taxes, by another clause to borrow money, and by other clauses various other powers, which certainly may, or may not be exercised, without a violation of the constitution;—as for example, if Congress was never to lay a tax; was never to borrow money; was never to lay an excise, or to pass a uniform law on the subject of bankruptcy; it could not be contended that the constitution was violated because she did not exercise these powers:—yet in all these cases the language of the constitution is, "Congress shall have power." Nor did he suppose, if Congress were never to exercise exclusive legislation over this territory, it could be contended, the constitution was violated; because this power, like all others given under the different clauses of the eighth section, may, or may not, be exercised; as the public exigencies shall require. None of the clauses are mandatory. The national legislature is in every case left to determine whether the public good requires the exercise of a particular power. If then Congress may never exercise this power; and not violate the constitution; it follows, that the actual exercise of exclusive legislation over this territory, is not an essential part of the constitution, but that this clause, like all others in the eighth section, is a mere grant of power. If then this clause which gives to Congress exclusive legislation over this territory, is only a grant of power, the use she may constitutionally make of the power, depends on the extent of the grant; and we may fairly enquire, whether the power over this territory is conferred on Congress, in terms so unlimited as to authorise its transfer to any other person or persons.

In order to decide this question, it will be necessary to ascertain; what is the power conferred on Congress over this district, by the terms exclusive legislation, in all cases whatsoever. Is it the same limited sovereignty, which she possesses over other territories of the United States, which have not become states? Or is it an absolute sovereignty? In countries where no written compacts or charters exist between the people, and those who govern, sovereignty is defined, to be the "power of making laws." A right to dictate the rule of action in all cases subject to no controul is certainly a complete sovereignty. In this country, in the individual states, the sovereignty resides in the people, and the legislative power extends only, to certain specified objects, fixed by their constitutions. Under the general government also, the legislative power of Congress, so far as it respects the confederated states, extends only, to certain specified objects, fixed by the constitution, and all powers, not expressly given, are reserved by the states or the people. In speaking therefore of the legislative power of a state, or of Congress so far as it relates to the United States, we mean nothing more, than the power of making such laws as are authorised by the constitutions of the different states, or of the United States. He supposed however, that the terms "exclusive legislation," contained in the article, which gave to Congress jurisdiction over this territory, had a very different meaning from the mere power of making laws. They did, in his opinion, vest in Congress absolute sovereignty over the district. He had no doubt but that the words were selected for that purpose. An absolute sovereignty, is the power to pass laws, without any limitation, as to the exercise of that power. Let any gentleman attend to the clause which gives to Congress jurisdiction over this district of country—Congress shall have power, to exercise exclusive legislation in all cases whatsoever. What is the limitation to this power? Is there any but the moral rectitude of Congress? Have the people of this territory any charter of rights? If they have, where is it to be found? Can they claim the constitution of the United States as their charter of rights? They are not parties to that compact. If they are at all parties to that compact, it must be, as citizens of Maryland and Virginia. Whatever rights, as a portion of the states of Maryland and Virginia, they might have acquired, by being citizens of those states, at the time the constitution of the United States was adopted, were certainly lost, by the acts of cession of Maryland and Virginia.—By that transfer they lost their chartered rights under the state constitutions of Maryland and Virginia, and also the rights they had acquired under the constitution of the United States as portions of the states of Maryland and Virginia at the time of its adoption. By the acts of cession their right of property only, is secured; their political rights vested in Congress. And the people of this territory, have as good a right to claim as their charter, the state constitutions of Maryland and Virginia, as they would have to claim the constitution of the U. States. Their rights under the constitution of the United States were acquired as citizens of Maryland and Virginia, and their rights as citizens of those states are lost. It is not therefore in the constitution of the United States, we are to look for the limitation of the power of Congress as it respects this district. Is it in the people of the district we are to look for this limitation? Have they any share in our election? Are we in any shape responsible to them?—Are they represented on this floor? Do they pretend to claim, or exercise, any political rights? If then an absolute power to legislate without controul, is an absolute sovereignty, and there is no controul, either by charter, or in the people of this territory over the power of Congress, as it respects this district, it follows irresistibly, however galling it may be to the people of the district, that as complete sovereignty over them as human language can give, is vested in Congress. That her will is the law of the district of Columbia, and that the political privileges of these people depend solely on the moral rectitude of the national legislature. This doctrine is strengthened by the opinion which has always been entertained, that the framers of the constitution intended to vest Congress with absolute power within this district. And indeed he had often heard that one of the most conspicuous friends to this monster in the constitution, declared, that liberty ought not to exist within the ten miles square, that one great officer, and one great prison, was the only government which ought to be established within this devoted territory. If, as he had attempted to shew, an absolute sovereignty over the territory was vested in Congress, it followed as a necessary consequence that it might be transferred.—The United States had sanctioned the principle of transfer where the sovereignty was complete, because they had acquired a valuable territory under such a transfer.

But there was another point of view in which this question might be placed. It was generally admitted that under the terms "exclusive legislation," Congress had power to exercise, or provide for the exercise, of legislative, executive and judiciary powers, within this district. Some of her powers she must necessarily delegate because she cannot herself exercise them.—If she can transfer a portion of her sovereignty, she might, he presumed, establish a government for the territory, and vest in it legislative, executive, and judiciary powers. If Congress has a right to establish a government for the territory, in whom does the constitution require her to vest her powers. She may vest them in one or more persons, or in one or more corporations. There is no limitation on the exercise of this right if Congress possesses it at all. If she can transfer her powers over this territory to a government within the ten miles square, what prevents her transferring these powers to a government without the ten miles square. Has not Congress the same right to transfer her sovereignty over the part of the territory bordering on Maryland to that state, and her sovereignty over the part of the territory bordering on Virginia to that state, that she would have to transfer the same powers to a government within the district. The same clause which gives her exclusive legislation is the only limitation on her power. By establishing a government for the district, Congress would be divested of her exclusive legislation. By a transfer to Maryland and Virginia Congress would be divested of her exclusive legislation also. The extent of the power exercised in the two cases is substantially the same.

There was another point of view in which this question might be placed. This ten miles square is a portion of territory within the United States. It is admitted that the people of this territory possess no portion of the sovereign power. The sovereign power over this district then is either absolutely in Congress or Congress possesses a portion of the sovereignty, and the residue is in the people of the individual states or in the states. If Congress possessed the entire sovereignty she might transfer as he had shewn. If Congress possessed only a limited sovereignty within this district, it must be derived from the IId clause of the III. section of the 4th article of the constitution which declares "that Congress shall have power to dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States. Or in other words Congress possesses the same power over this territory which she has over other portions of territory which possess population without being States. In the exercise of her ordinary territorial power, Congress during the last session, attached the territory of upper Louisiana to Indiana. If Congress had a right to attach that territory to Indiana, why may she not transfer this territory, divide it as she did the territory of Louisiana and attach a part to Maryland and a part to Virginia, with the consent of these states.

If the view he had taken of the powers of Congress over this district was a correct one it would not be necessary to say much on the expediency of a measure interesting to the people of the district, to the people of the United States, and to the national legislature. The people of the district in returning to the bosom of the respective sovereignties from which they have been torn, will be again restored to the rights of freemen. Instead of a miserable dependance on the will of Congress, their rights will stand on the firm basis of a written charter. Their industry be placed under the fostering care of men elected annually by themselves possessing their feelings and interests. They will quickly experience, the difference between that legislation, which flows from a cold sense of duty, without responsibility, and the active and zealous exertion excited by a common interest and kept up by proper responsibility. To doubt the beneficial effects of such a change to the people of this territory, would be to call in question the great principles of representative government. It is true that a gentlemen from Maryland, has told us, that the rights of a people are sufficiently secure, if those who govern them have no interest in injuring them. And that the advantage of a legislative body of their own, might be questioned because too much legislation was worse than none. The people of America have ever deemed the right of electing those who govern them essential to freedom. The time he hoped, would never arrive in this country, when this important privilege shall cease to be valued. He should not attempt to demonstrate a first principle. If the gentleman from Maryland had any doubts as to the blessing of self government to a people, he would recommend to him a perusal of the history of American independence, in which he will find the patriot whose shade he had invoked, devoting the best period of his life to toil and danger for the establishment of that principle. But we are told that the people of this district deprecate a change, and prefer political slavery, to a full participation of American rights. Do we believe this to be a fact? If it was a fact it was to his mind a conclusive one in favour of receding the territory. If this people have already so far degenerated as to attach no value to the blessings of self-government, and prefer living destitute of political rights, they are already fit instruments for tyrants. It is time for them to take a new lesson in the rights of man. Let us restore them to a situation in which if they cannot acquire the feelings of American citizens, their detestable principles may not injure the great mass of the community. He did not however believe that this was the sentiment of a majority of the people of this district. He did not believe it was the fair sentiment of any portion of people in any part of the United States. He had no doubt if the question was fairly put to the great mass of any community, had you rather have your persons, your property, and rights, protected by men elected by yourselves, or live dependent on men in whose election you have no voice, over whose power you have no control; that the answer would in every instance be in favour of possessing these important privileges; what had been viewed as the sentiment of the district, he considered only, as the opinion of a few land lords, who having embraced the erroneous idea, that receding this territory, would effect the value of their property, had misled and enlisted on their side the people, against their substantial interests. By what process of reasoning this people had been induced to believe that enlarging their political rights would lessen the value of their property, he did not know. It was a species of logic he wished not to understand—as one of the representatives of the United States he should consider himself bound to extend to these people the privileges which every American ought to possess. He had always been taught to believe that the privileges attached to property constituted an important part of its value. That in enlarging human right in a district of country, you enlarge also the means of happiness and give additional value to the property of the citizen.

The people of the United States will be freed from the expence of legislating for this district. The time destined for national purposes will be employed for the good of the nation, and not in local legislation for a territory, whose internal regulations, must in time require more laws, than all the general interests of the union. They will restore to the rank of American citizens a portion of people doomed under momentary error to political degradation. Their system of protection and rights will become uniform throughout the United States, and our people be relieved from an example odious to freemen, and dangerous to liberty, of a political society existing in our country, destitute of political rights.

As it respects the National legislature he had always thought this exclusive jurisdiction while it devolved on them great additional labour, was not calculated to afford them any additional security or freedom in their deliberations. The legislative body of a free country must stand on the broad basis of public opinion. In the faithful discharge of their duties; they require not the hand of power to protect their deliberations.—An honest and enlightened legislature pursuing faithfully the public interest, will find in the attachment of a grateful people, that safety which would be in vain sought, in powers derived from parchment. Deserving the confidence, & possessing the support of the nation, the national legislature can command respect in any situation. Let them forfeit that confidence, and if their jurisdiction absolute, and uncontrouled, embraced the whole continent instead of this ten miles square, the frowns of an indignant people would reach them. It is not by surrounding your capital with men destitute of political rights that you can exclude the voice of freemen. The sanctity of parchment power used as an engine of oppression is not known in this country. The virtue of the legislature is its only shield. It is that alone which insures the support of the nation. With the confidence of the nation we possess its sword and its purse, and can command the respect due to the representatives of a free people. Under whatever aspect he viewed the question, whether as it respects the people of the district, the nation or national legislature he had no doubt as to the expediency of receding the territory.

TUESDAY, JANUARY 8.

Mr. SOUTHARD—Mr. Chairman, I should have contented myself with giving a silent vote on this question, had it not been for the strong impressions on my mind that more is *intended* than *expressed* in the resolutions now on the table. It is not two years since two resolutions were introduced to this House similar to those now under consideration, with this distinction, that *they* went to include the city of Washington with the other parts of the district, in the transfer to the states of Virginia and Maryland.

I believe it to be the object of some members not only to recede the branches of the district contained in these resolutions, but likewise the city. If the doctrine, so strongly contended for, that Congress has a right to transfer or recede, be once established, take the first step, and you as easily take the second.—I have no desire to call in question the sincerity of the mover of these resolutions, nor of many who support them, yet there are others who wish a recession of the *whole* territory.

This subject involves two questions—1st. Whether Congress has a constitutional power to make a retrocession of this district to the states of Virginia and Maryland—And 2ndly Whether it be good policy. As to the first, Mr. S. said he had strong doubts on his mind, as to the rightful power of Congress to recede or transfer.

The members of the convention who framed the constitution of the United States looked forward to a day when it would become necessary to fix on a place which should become the permanent seat of the government. By reference to the eighth section of the first article of the constitution, we see it clearly expressed that Congress shall have 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."

This article, with all others contained in that instrument, after publication for the consideration of the people of the United States, was adopted, and became a part of the constitution. In pursuance of this object Congress, on the 16th of July, 1790, passed an act, entitled the cession act, in the words following:

"That a district of territory, not exceeding ten miles square, to be located as hereafter directed, on the river Potomac, at some place between the mouths of the Eastern Branch and Connogocheguе, be, and the same is hereby accepted for the permanent seat of the government of the United States."

Congress accepted a cession of ten miles square for the express purpose, and on the express condition of exercising exclusive legislation and jurisdiction, and this too agreeably to the spirit and meaning of the constitution and law, thus forming a compact, which Congress has no right to violate. All the states in their legislative capacity, and the people of the United States, including the inhabitants of this territory, are bound by this compact, which compact is as strong as the constitution itself.

But, Mr. Chairman, we are told that there can be no constitutional objection to the retrocession. The gentleman from North Carolina (Mr. Stanford) contends that this district stands on the same footing as a plot of land purchased by the government, for a navy-yard—