

# WILMINGTON GAZETTE.

Published weekly by *ALLMAN HALL*, at THREE DOLLARS a YEAR.

TUESDAY, NOVEMBER 29, 1803.

[Vol. 7, No. 260.]

## CONGRESS.

House of Representatives.  
Monday, Oct. 24.

## LOUISIANA TREATY. Call for Papers. [Continued from our last.]

Mr. Goddard did not intend to enter upon a long discussion of the resolution; but it seemed to him that the reasons of the gentleman from Virginia for opposing it were very erroneous. On what ground was the opposition made? Altogether on the ground that Spain had actually made the cession to France. Mr. G. apprehended no such impression had been made on the House by the information before them. In the first article of the treaty, they learned what the title of France was. The treaty says,

"Whereas, by the article the 3d of the treaty concluded at St. Ildefonso, the 9th Vendemiaire, an. 9. (1st October, 1800) between the First Consul of the French Republic and his Catholic Majesty, it was agreed as follows:

"His Catholic Majesty promises and engages on his part to cede to the French Republic, six months after the full and entire execution of the conditions and stipulations herein relative to his royal highness the duke of Parma, the colony or province of Louisiana, with the same extent that it now has 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.

"And whereas in pursuance of the treaty, and particularly of the third article, the French Republic has an incontestible title to the domain, and to the possession of the said territory. The First Consul of the French Republic desiring to give to the United States a strong proof of his friendship, doth hereby cede to the said United States, in the name of the French Republic, forever and in full sovereignty, the said territory with all its rights and appurtenances, as full; and in the same manner as they have been acquired by the French Republic in virtue of the abovementioned treaty, concluded with his Catholic Majesty.

Mr. Goddard asked whether the conclusion followed that France had an incontestible title to Louisiana.—There was no such evidence. If in virtue of this treaty we purchase a promise on the part of his Catholic Majesty to cede, and not an incontestible title, he would ask if the promise constituted a title. France only says we cede all our title. This, and this only is the language of the instrument. If this is the case, is it not proper to enquire whether there are other acts by which Spain has ceded Louisiana to France. Such acts may exist. Certain stipulations were made by France to Spain, on which the cession depended. Do we not wish to know whether these stipulations have been fulfilled and whether they are binding, or whether Spain has waived them. Are there in existence any documents to this effect? It has been hinted that such documents exist in the newspapers; but are we in an affair of this magnitude to be referred to the dictum of a newspaper? He apprehended that this was a novel mode of legislation.

The gentleman from Virginia, says that the 4th article of the treaty, stipulates for the delivery of the country. That article is to this effect:

"There shall be sent by the government of France a commissary to Louisiana, to the end that he do every act necessary, as well to receive from the officers of his Catholic Majesty the said country and its dependencies, in the name of the French Republic, if it has not been already done, as to transmit in the name of the French Republic to the commissary or agent of the United States."

Now what is the commissary to do? He is in the first instance, to receive the province from Spain. Can he transmit it to the United States before he receives it from Spain? We require to know, if Spain refuses to deliver Louisiana to France, can France transmit it to us? We desire to know whether there is any prospect of a refusal on the part of Spain.

Suppose we shall receive the colony from France under the dictation of the First Consul to Spain, without experiencing any opposition from her. May not the time arrive, on a revolu-

tion in the affairs of Europe, when she will enquire by what title we hold it. Is it not proper then for us to obtain papers by which our title may be fully understood.

One singular argument is used by the gentleman from Virginia. This treaty he says, is hailed by the acclamations of the country. But Mr. G. would ask if the public had any opportunity of examining it, and being fully acquainted with its principles and probable operation. It had been made public only within a few days. What evidence of popular affection for it can there yet have been manifested? Will the people hail it with acclamation when they shall learn that it gives fifteen millions of dollars for a mere promise. At any rate, as all agree in the importance of the subject, and as we are called upon to legislate upon it, is it not proper first to obtain all the necessary information that is to be had? The resolution goes this far, and no farther, and if gentlemen claim our confidence, ought they not to furnish us with information?

Mr. Smilie remembered that a subject of this nature had been bro't before the house, in the first session of the fourth Congress. He thought it proper to recur to the proceedings on that occasion to learn the sentiments entertained at that day. At that day it had been argued by certain gentlemen that the right of passing or not passing the necessary laws for carrying a treaty into effect did not belong to that house; but that they were under an absolute obligation to pass them; that they had no discretion on the subject: This was a doctrine which he did not believe true. He then believed that they possessed the right, and still entertained the same opinion. To shew the sentiments entertained in the case of the British treaty, he would recur to the journals of the house.

On the 24th of March, 1796, the following motion was made:

"Resolved, That the President of the United States be requested to lay before the house a copy of the instructions to the minister of the United States, who negotiated the treaty with the king of Great-Britain, communicated by his message of the first instant, together with the correspondence and other documents relative to the said treaty excepting such of the said papers as any existing negotiation may render improper to be disclosed.

This resolution was carried in the affirmative by Ayes and Noes, and among the Noes, I observe said Mr. Smilie, the name of the mover of this resolution. The resolution was carried by a large majority and sent to the president. What was his opinion? Not that I approve it, or am governed by it; though it ought, in my opinion to be a rule on this occasion to those who coincided with him. On the 30th of March the President of the United States communicated the following message to the House:

"Gentlemen of the House of Representatives.

"With the utmost attention, I have considered your resolution of the twenty fourth instant, requesting me to lay before your house, a copy of the instructions, to the minister of the United States, who negotiated the treaty with the King of Great-Britain, together with the correspondence and other documents relative to that treaty, excepting such of the said papers as any existing negotiation may render improper to be disclosed.—In deliberating upon this subject, it was impossible for me to lose sight of the principle, which some have avowed in its discussion, or to avoid extending my views to the consequences which must flow from the admission of that principle.

"I trust that no part of my conduct has ever indicated a disposition to withhold any information which the constitution has enjoined upon the President, as a duty to give, or which could be required of him by either House of Congress as a right; and with truth I affirm, that it has been as it will continue to be while I have the honour to preside in the government my constant endeavour to harmonize with the other branches thereof; so far as the trust delegated to me by the people of the United States, and my sense of the obligation it imposes, to preserve, protect and defend the constitution, will permit.

"The nature of foreign negotiations requires caution; and their success must often depend on secrecy;

and even when brought to a conclusion, a full disclosure of all the measures, demands, or eventual concessions which may have been proposed or contemplated, would be extremely impolitic: for this might have a pernicious influence on future negotiations, or produce immediate inconveniences; perhaps danger and mischief in relation to other powers. The necessity of such caution and secrecy was one cogent reason for vesting the power of making treaties in the President, with the advice and consent of the Senate: the principles on which that body was formed confining it to a small number of members. To admit then a right in the House of Representatives, to demand and to have as a matter of course, all the papers respecting a negotiation, with a foreign power, would be to establish a dangerous precedent.

"It does not occur that the inspection of the papers asked for, can be relative to any purpose under the cognizance of the House of Representatives, except that of an impeachment; which the resolution has not expressed. I repeat that I have no disposition to withhold any information which the duty of my station will permit, or the public good shall require to be disclosed; and in fact all the papers affecting the negotiation with Great-Britain were laid before the Senate, when the treaty itself was communicated for their consideration and advice.

"The course which the debate has taken, on the resolution of the house, leads to some observations on the mode of making treaties under the constitution of the United States. "Having been a member of the general convention, and knowing the principles on which the constitution was formed, I have ever entertained but one opinion on this subject; and from the first establishment of the government to this moment, my conduct has exemplified that opinion; that the power of making treaties is exclusively vested in the President, by and with the advice and consent of the Senate, provided that two thirds of the Senators present concur; and that very treaty so made and promulgated thence forward becomes the law of the land. It is thus that the treaty making power has been understood by foreign nations, and in all the treaties made with them, we have declared and they have believed, that when ratified by the President, with the advice and consent of the senate, they became obligatory. In this construction of the constitution, every House of Representatives has heretofore acquiesced, and until the present time not a doubt of suspicion has appeared to my knowledge, that this construction was not the true one. Nay, they have more than acquiesced; for till now, without controverting the obligation of such treaties, they have made all the requisite provisions for carrying them into effect.

"There is also reason to believe, that this construction agrees with the opinions entertained by the state conventions when they were deliberating on the constitution, especially by those who objected to it, because there was not required, in commercial treaties the consent of two thirds of the whole number of the members of the Senate. Instead of two thirds of the Senators present, and because in treaties respecting territorial and certain other rights and claims, the concurrence of three fourths of the whole number of the members of both houses respectively, was not made necessary, is a fact declared by the general convention, and universally understood, that the constitution of the United States was the result of a spirit of amity and mutual concession. And it is well known that under this influence the smaller states were admitted to an equal representation in the senate, with the larger states, and that this branch of the government was invested with great powers, for on the equal participation of those powers, the sovereignty and political safety of the smaller states were deemed essentially to depend.

"If other proofs than these, and the plain letter of the constitution itself, be necessary to ascertain the point under consideration, they may be found in the journals of the general convention, which I have deposited in the office of the department of state. In those journals it will appear that a proposition was made, that no treaty should be binding on the United States, which was not ratified by a law; and that the proposition

was explicitly rejected.

"As therefore it is perfectly clear to my understanding, that the assent of the House of Representatives is not necessary to the validity of a treaty, as the treaty with Great-Britain exhibits in itself all the objects requiring legislative provision, and on these the papers called for can throw no light, and as it is essential to the due administration of the government that the boundaries fixed by the constitution between the different departments should be preserved; a just regard to the constitution and to the duty of my office, under all the circumstances of this case, forbid compliance with your request.

GEO. WASHINGTON.

United States,  
March 30th, 1796.

Mr. Smilie concluded by saying he perceived no necessity for the papers desired by gentlemen, & should therefore vote against the motion.

Mr. Randolph said if the gentleman from Connecticut would confine his motion to the treaty of St. Ildefonso, he should be ready to acquiesce in it, though he did not believe that instrument would throw any new light on the subject.

Mr. Gregg said his wish was that the resolution should be divided, and that the treaty of St. Ildefonso only should be requested. It had been conceded that it might be of some use in ascertaining the limits of the cession. To the other member of the resolution he was opposed. He therefore moved a division of the question.

Mr. Griswold remarked that it would be more orderly to move the striking out the last paragraph.

Mr. Sandford did not rise to say, with his colleague, Mr. Lyon, that the resolution offered by the gentleman from Connecticut was indecent, but to say, that in his opinion, it was altogether unnecessary. It appeared to be a fact well understood in the United States, that Louisiana did, before the last Convention, belong to France. The fact was recognized in the treaty. If this fact be acknowledged, what remains for us to do, but to pass the necessary laws for carrying into operation the convention concluded on the 30th of April. Though these might be no official information to that effect, he was correct in saying possession of the country had been given to France by Spain. What then can be necessary on our part to obtain possession other than the passage of the necessary laws to carry the treaty into effect?

Mr. Elliott was opposed to every part of the call on the Executive for papers. He had a variety of objections to this request, with the mention of all of which he should not however trouble the house. His great objection was that the call was premature, & this appeared in his opinion, clearly appeared even from the speech of the honourable gentleman from Connecticut (Mr. Griswold) and his honourable colleague (Mr. Goddard). To their brilliant talents he was disposed to pay the highest homage. The first gentleman was not only ingenious and indefatigable, but likewise thoughtful and profound. He had already been frequently delighted and instructed by his intelligence. The remarks also of his colleague were ingenious & worthy of attention. But still he thought them premature. For what purpose was this call made? The gentleman says his attention is called to the subject by the President informing us in his Message that it is necessary for us to pass temporary laws, and that thence it becomes desirable to learn whether we have acquired either new territory or new subjects. Mr. Elliott was clearly of opinion that as yet we had not, tho' in a short time if the treaty were carried into effect, we should acquire them. The difficulties stated by the gentleman, the least investigation will shew to be imaginary. Young as I am, said Mr. Elliott, and little conversant in diplomatic knowledge, I believe the views I shall exhibit will be as clear as those of the gentleman. The Message of the President, at the opening of the session, announces that the "enlightened government of France saw with just discernment, the importance to both nations of such liberal arrangements as might best and permanently promote the peace, friendship and interests of both; and the property and sovereignty of Louisiana, which had been restored to them, has, on certain conditions, been transferred to

the United States by instruments bearing date the 30th of April." The President then informs us that "when these shall have received the constitutional sanction of the Senate, they will without delay, be communicated to the Representatives also, for the exercise of their functions as to those conditions which are within the powers vested by the constitution in Congress." The message goes further and informs us, not in the phraseology of the gentleman from Connecticut, that we have acquired new subjects, but that if the treaty shall receive the constitutional sanction of the Senate and House of Representatives, "not of subjects but of citizens "with the wisdom of Congress, says the President, it will rest to take those ulterior measures which may be necessary for the immediate occupation & temporary government of the country; for its incorporation into our union; for rendering the change of government a blessing to our newly adopted brethren."

Whether we acquire this territory and these citizens is consequential on the constitutional ratification of the treaty.

But it is said that our title to Louisiana is deducible from the 1st article of the treaty, and that that article only contains a promise; and it is triumphantly asked whether the people of the United States will be satisfied with paying fifteen millions for a mere promise (Mr. Elliott here quoted the 1st article of the treaty). I acknowledge, said he, that this is only an assertion by France of her incontestible title, and an assurance that on certain terms she will convey this title to the United States. But, according to the treaty and Convention, an agent is to be appointed by France, who is to deliver up the possession before we pay the fifteen millions. But say gentlemen though this may be done, Spain may not abandon her title to the province. No such consequence, however can result. The convention that follows a treaty, contains a stipulation that the stock created shall not be delivered until "after Louisiana shall be taken possession of in the name of the government of the United States." So that taking the treaty and the convention together there can result none of the inconveniences apprehended. A treaty has been made between the First Consul and the United States, by which the First Consul has transferred to us the domain and jurisdiction of Louisiana. In the treaty it is stipulated that a commissary shall be sent to receive the country from the court of Madrid and to give us the possession. If these two articles be carried into effect, and they must be to make the treaty binding, we must obtain not only the actual but also the legal possession. It is incumbent, therefore, on us to do every thing, necessary on our part, to realize the possession.

Mr. Thatcher said tho' the gentleman who had just set down, had acquitted himself handsomely he had neither convinced him that the resolution of the gentleman from Connecticut was ill-founded or unnecessary. As they were in the capacity of a legislative body, called upon to pass laws for new territory and new citizens, it was according to his understanding, necessary in the first instance, to learn that they had acquired new territory and new citizens. The title to Louisiana, as derived to France from Spain, was stated in the first article of the treaty.—Here Mr. T. read the first article. By this it appears that another treaty had been formed between France and Spain. It was admitted that the province had belonged to Spain; and to her it must still belong unless France has performed certain stipulations agreed to as the price of the cession. The object of the mover is to obtain this treaty, and to learn whether France has performed these stipulations.

Gentlemen objecting to this resolution, have taken different grounds. Some oppose it as inconsistent with the sentiments that prevailed in the case of the British Treaty; others because it is premature, and others because it is unnecessary. He did not expect the first objection from any member on that floor; much less did he expect it from the quarter in which it originated. The advocates of the motion were charged with inconsistency. He was not a member of the house at the time of the British treaty; but on referring to the journal, it would be perceived that the object of