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CONGRESS.

IN SENATE.

Debate on the subject of the Territory West of the Perdido.
Thursday, Dec. 27, 1810.

The bill declaring the laws now in force in the territory of Orleans to extend to have full force and effect to the river Perdido, pursuant to the treaty concluded at Paris on the 30th April, 1803; and for other purposes, being under consideration; and the question being on its passage to a third reading—

Mr. Pope—Mr. President, I regret that the honorable chairman of the committee who reported this bill, is not here, to give that support which his talents, information, and the importance of the subject authorized us to expect. His absence has devolved on me, as a member of the committee, and a representative of that portion of the union more immediately interested in the subject before us, to explain to the Senate the grounds which induced them to make this report. The first important question which the proclamation of the President and this bill presents for consideration, is whether or not the United States have a good title to the territory in question. Before I examine the treaty of cession from France to the United States of 1803, the source of our claim, permit me to enquire what were the limits of Louisiana in that quarter to which this subject leads us, before the treaty and after it.

On this subject however, I believe there is no contrariety of opinion.—Before this period Louisiana extended east of the river Mississippi to the river Perdido—France and Spain, by the treaty of 1719, established this boundary between Florida, now called East Florida and Louisiana. The ancient limits of Louisiana have been so fully ascertained by the documents laid before Congress at different times, and the numerous discussions the subject has undergone, that I should only waste the time of the Senate in attempting to throw any new light on it. I shall only refer to the Senate to one additional evidence, that this river was the ancient eastern boundary of this province. Mr. Smollet, in his continuation of the history of England, states the answer of the British government to the proposition made by France for peace early in the year 1791. From which it appears that France then claimed the river Perdido as their eastern limit, nor does this fact appear to have been controverted by the British minister. It appears that previous to the war which terminated in 1763, Louisiana comprehended nearly the whole country watered by the Mississippi and its branches. I find it stated in a pamphlet published in New-York, that France by a secret cession, contemporaneous with the treaty called the family compact of 1761, transferred this country to Spain, to induce her to become her ally in the war against G. Britain; and although I can find no evidence to support this statement, yet the event of that war previous to that period renders it at least probable. It will be remembered that the arms of Great Britain had triumphed over those of France both by sea and land; France had lost Canada and a great number of her ships of war—Spain was not then a party in the war, and to induce her to become her ally, it seems probable that France, under the pressure of adverse fortune, ceded to her this province. But as this statement does not correspond with the documents on our tables, nor the views of others who have examined this subject, we are compelled to take it for granted, that the cession of west Louisiana, with the Island of New-Orleans to Spain, and of east Louisiana, since called west Florida, to Great-Britain, were made at the same time in the year '62. It is well known, that France made the cession to Great-Britain at the instance and for the benefit of Spain, to enable her, with the cession of Florida, now called east Florida, to obtain a restitution of Cuba.

The whole of Louisiana, not conquered by Great-Britain, may, with propriety, be said to have been given up, or ceded to Spain. Let us now examine that part of the treaty of cession between the United States and France of 1803, which relates to this question.—By that treaty, we acquired Louisiana as fully and in the same manner as it had been acquired by France from Spain, in virtue of the treaty of St. Ildefonso of the 1st of October, 1800. By this treaty Spain had retroceded Louisiana to France "with the same extent 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." That extract from that treaty is correct cannot be doubted as it has never been denied by Spain. The word "retrocede," in this treaty has, I believe, occasioned more doubt with regard to the meaning of this cession than any expression contained in it, but cannot when the subject is properly examined have the effect contended for. It is said that as France ceded to Spain, in 1762, Louisiana west of the Mississippi including the Island of New-Orleans; the word retrocede must limit the cession to what had been previously ceded by France to Spain—but if it be true that the whole of Louisiana east and west of the Mississippi was ceded to Spain in the year 1761, although west Louisiana was afterwards ceded by France with the consent of Spain to Great-Britain, the word retrocede might with propriety be used with reference to the original grant to Spain in 1761, which will not be denied, the cession of east Louisiana to Great-Britain by France was at the instance, and for the benefit of Spain; Spain in

1800, after she had acquired East Louisiana, at the West Florida, so called by Great-Britain after 1763, could well say to France, I re-grant to you what you ceded to me and on my account, or at least so much as I can regrant consistent with the treaties I have since made; and this seems to be the plain and evident meaning of the instrument. If the parties had meant to confine the retrocession to the limits of the cession, made by France to Spain, of Louisiana west of the Mississippi including the Island of New-Orleans, they would have used the same description. They would certainly have stopped after saying the extent it then had in the hands of Spain—but to prevent mistake or misconception, they added, "with the same extent it then had when France possessed it;" and what is still more conclusive of the meaning of the parties, they go on to say—"and such as it should be after the treaties subsequently entered into between Spain and other states." As Spain had never entered into any treaty, with regard to the western boundary of Louisiana, and as the only treaties to which the parties could have alluded, was that of 1762 with Great Britain and of 1795 with the United States, both relative to limits on the east side of the Mississippi, it is perfectly clear that the contracting parties meant to comprehend whatever of Louisiana on the east side of the Mississippi Spain had a title to. If the construction I contend for is not admitted, then the latter parts of the description will have no effect, contrary to a settled principle of law and common sense, that every part of an instrument shall have effect, if it can by any reasonable construction. To strengthen the construction for which I insist it may not be amiss to consider the views of the French government at the time this treaty of St. Ildefonso was made. They no doubt acquired this province with an intention of holding it, and it was an object of national pride to regain as much as practicable of the colonies which had been lost under the old government. Besides they could not be ignorant of the importance of East Louisiana, now West Florida, to the security of New-Orleans, and as the practicability of obtaining it at that time from Spain cannot be doubted, the presumption is irresistible that the cession was intended to embrace it. I had intended to have ascertained at the Department of State the ground of objection with Spain to the surrender of that country to the United States, but have not made the enquiry. I do not however think it difficult to account for the conduct of Spain. My conjecture is, that France, after she had sold Louisiana to the United States and received the price stipulated, secretly advised Spain not to surrender it, having at that time formed the project, which she is now attempting to execute, of acquiring the whole Spanish empire; her interest was therefore identified with that of Spain, and she was no doubt willing to unite with Spain in giving the most limited instruction to the cession of the United States. I find that Congress, by an act passed on the 24th of February, 1804, have solemnly asserted our right to this territory and authorized the President to take possession of it, and to establish a port of entry, &c. on the Mobile, whenever he should deem it expedient. The time when, and circumstances under which this step should be taken, were submitted to the discretion of the Executive. I may be permitted to ask why, if we had no title to this territory, the President was urged to take possession by force, and censured for not doing it. If my recollection is accurate, all parties agreed we ought to have the country; they only differed as to the mode of acquiring it. The President, influenced by that policy which has hitherto guided the present administration of avoiding making this nation a party in the present European war, in the exercise of the discretionary power vested in him by that act, did not think proper to seize upon it by force, but to wait for the occurrence of events to throw it into our hands without a struggle.

The expediency of taking possession of this territory cannot, it appears to me, admit of a doubt. If the President had refused or hesitated to meet the wishes of the people of West Florida by extending to them the protection of the American government, and they had sought security in the arms of a foreign power, what should we have heard? He would have been charged with imbecility and fear of incurring responsibility. He would have been denounced as unworthy of the station his country had assigned him. Let it be remembered that the Orleans country is our most vulnerable part—remote from our physical force—a climate more fatal to our people than the sword of a victorious enemy—and that an enemy in possession of West Florida can with great facility cut off New Orleans from the upper country. If the fortunate moment had not been seized, this province would have fallen into the hands of a foreign power, or if time had been given for intrigue to mature itself, another Burr plot would probably have risen from the ashes of the first, more formidable to the integrity of this empire. Burr, like Archimedes, fancied that if he had a place to stand upon, a place beyond the jurisdiction of the United States to rally his followers, he could overturn the government. He has, it is true, fled from the frowns of an indignant country. But he was not alone. Let an opportunity be afforded and a thousand Burrs would throw off the mask and point their arms against the federal Union. On a subject of such interest it would have been criminal in those appointed to watch over the national safety to have hesitated. I was surprised to hear this procedure pronounced a robbery, and making of war. Why should our sympathies be

awakened in favor of Spain? What claim has the Spanish government upon our moderation and forbearance? What has been her conduct from the moment we became an independent nation she has been intriguing to separate the Western country from the Atlantic states. She has made, at different periods, and as late as the year 1806 in violation of her treaty of 1795 with this country, direct propositions to the Western people to secede from the Union, and to accomplish her object at least attempted the use of means the most corrupt. What has been her conduct since we acquired Louisiana? If I am correctly informed, our deserters and slaves who have been sent to Florida in many instances have not been surrendered, and enormous duties have been imposed on our vessels navigating the Mobile. Under all these provocations, sufficient to have drawn upon them from almost any other nation an open declaration of war, our government, influenced by that pacific policy which has hitherto regulated its course towards foreign nations, exercised patience and forbearance. And since the late revolution in Spain, I believe it will not be pretended, that this government has manifested any disposition to throw our weight into the scale of France against the Spanish party. Our government has taken no step in relation to West Florida until compelled by a regard to our own safety. The Executive in the proceeding under consideration has used language the most conciliatory, and on the face of his proclamation given a pledge that this government will at any time enter into amicable negotiations on the subject of our claim to this territory, if it shall be disputed.

There are other at least plausible grounds upon which this bill as an original proposition might be supported entirely independent of the cession. Spain is indebted to us a large amount for spoils committed on our commerce; and as there is no government at present towards which the ordinary proceeding can be pursued to obtain payment, could we not, on the principle of the attachment law, as an act of self justice, seize on this territory to secure satisfaction?

As this measure has been emphatically called an act of robbery and war, it may not be amiss to consider the political state of the Spanish colonies in relation to the Spanish government in the hands of the Junta, and the new dynasty about to be established by Bonaparte. It may be said, perhaps, that the late alienation of the Spanish crown and the revolution in Spain have dissolved the tie which connected them with the mother country. On this point I will not detain the Senate. If the French arms shall be successful in Spain, of which I believe few entertain much doubt, and the Junta shall be driven from Old Spain to any of the colonies, their political character must cease, and they can no longer claim the exercise of any jurisdiction or sovereignty over the colonies. The colonies are not bound together by any political bond unconnected with the mother country; they are subject to the mother country; but the moment she is conquered, they are at liberty to provide for themselves, unless, indeed, the emperor of France or king Joseph can claim them. France, in an official expose, and king Joseph, by proclamation, have declared their willingness that the colonies should become independent, provided they do not connect themselves with Great-Britain. If France therefore shall, which is probable, conquer the mother country, we are fully authorized by her public declaration to the world to acquire, with the consent of the inhabitants, not only west but east Florida, Cuba, or any other province which we shall deem it expedient to connect with the United States. This bill may be justified, independent of title, by the law of self preservation. Have we any assurance that the Spanish government will maintain their neutrality in this territory if we should be involved in a war with either France or Great Britain? Can they, or will they, prevent the march of an enemy's forces through that territory into the United States? No, sir.—We have every reason to expect the contrary. Considering how vulnerable we are from this territory, its present state, and the aspect of our foreign affairs, it appears to me that we are authorized to take possession of it as a measure of national security. It may be objected that taking the property of others by force tends to relax the morals of the people, by destroying that criterion of right and wrong, the observance of which is necessary to the purity of our republic; and I am ready to admit that we ought proceed upon this principle of necessity and expediency with great caution, and never to act upon it but in extreme and evident cases. Had we a colony on the coast of England or France, similarly situated, we know they would not hesitate. When we reflect that our property is seized by almost every nation; that the laws and usages of nations are disregarded by nearly all Europe; that their conduct has been lately marked with a degree of perfidy and rapacity unexampled in the history of the civilized world; that they have in fact become states of Barbary; it appears to me that that we ought not, as regards them, to be over nice or squeamish upon questions of this sort. Shall we sit here with our arms folded until the enemy is at our gates? If we waste our time in discussion and refining abstract questions of right and wrong we shall lose our independence and we shall deserve to lose it. I had hoped this bill would have passed without much debate; I know the people are tired of long speeches and documents. This fondness for lengthy discussions has even drawn upon Congress the reproaches of the ladies—they begin to say—less talk, more action.

Mr. Henry next addressed the Senate as follows:

Mr. President. The bill under consideration contains two important provisions. The first in effect incorporates with the Territory of Orleans the portion of West Florida East of the Mississippi as far as the river Perdido; the second extends to that part of the province that incorporated the laws now in force within the said territory.

These provisions naturally involve two questions: First, whether the United States have a good title to that part of the province described in the bill; and secondly, whether it would be expedient to take possession of it by force.

Before I proceed to consider these questions, I beg leave, Mr. President, to advert to what may be considered a preliminary question. I refer to the authority of the President of the United States to issue his proclamation and the accompanying orders of the 27th of October last, directing the forcible occupation of that territory. I deem it material to consider this point, because, if the proclamation were unauthorized, then Congress are not committed by it, nor are they bound to give it their sanction.

If the President had any authority to issue this proclamation, that authority must have been derived either under the constitution of the United States or under some act or acts of Congress. The President has no power which does not proceed from one or the other of these sources. The constitution has given to Congress the exclusive power of making laws and declaring war—to the President the powers of executing the laws of the Union. The powers of the one are legislative, of the other executive. The question then would be, whether the President in issuing this proclamation has not transcended the limits of his powers.

Sir, what is the nature and import of this proclamation? In my humble conception both legislative and war. War—because it directs the occupation of this territory by a military force. The regular troops of the United States are ordered to march, and, if they should not be found adequate to the object, the governors of the Orleans and Mississippi territories are directed to call out the militia of their respective territories, to co-operate with the regular forces. But we shall be told, Sir, that the President in issuing this proclamation has taken the precaution to direct that in case any particular place, however small, should remain in possession of a Spanish force, the commanding officer is not to proceed to employ force against it; but to make immediate report thereof to the Secretary of State. Suppose while your commanding officer is making his report the Spanish force sallies out and makes an attack upon your army, or suppose a Spanish army, with governor Folch at their head, should march from east Florida with the view of repelling the invasion of this territory; what are Governor Claiborne and his army to do? Ground their arms and surrender themselves prisoners of war; or are they, sir, to drop their muskets and take to their heels? These are the only alternatives presented—they must either surrender, run or fight. And who will doubt which of these alternatives the gallantry of an American army would impel them to chuse. Sir, a conflict would be inevitable.

But while the President has been so affectedly cautious with respect to a Spanish force, he has overlooked altogether the contingency of resistance on the part of the revolutionists. These patriots it would seem had called a convention and issued a declaration of independence, and now it appears have formed and established a regular government which is organized and in operation. If these proceedings are not all a sham, the territory in question is now in possession of a people claiming to be sovereign and independent; and is it supposable that this people can behave so dastardly as to submit, without a struggle, to the incursion of a hostile army whose avowed object is the conquest of the country and the subversion of its constitution & independence? And here permit me to remark, that the style and tenor of the letter from the Secretary of State of the 15th of Nov. 1810, to Governor Holmes, in answer to the letter of the President of the convention praying the recognition and protection of the United States, are not admirably calculated to give a welcome reception to the American army. If then resistance should be offered on the part of the constitutionalist, what is your army to do? The orders contain no proviso in this particular, requiring that the fact should be reported to the Department of State, but their clear intent is, that force should be employed. Under such circumstances is it not to be expected that this measure of the Executive will result in war? Is it not to be expected, that either the Spaniards or the constitutionalists will attempt to repel this palpable infringement upon their rights and territory?

But, sir, this proclamation is not only war, but it is an act of legislation too. It annexes the territory in question to the Orleans territory; it creates a governor; it enacts laws, and appropriates money. It gives to the Governor of the Orleans Territory all the authorities and functions over this particular territory which he possesses by virtue of his office as governor, and makes an appropriation of a sum of money, not exceeding twenty thousand dollars. This proclamation is substantially the bill under discussion, except that it goes much further.

(To be continued in our next.)