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CONGRESS.

IN SENATE.

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

(CONTINUATION OF MR. HORSLEY'S SPEECH.)

The first section of the bill only contains an appropriation of the territory in question to the Orleans territory—this the proclamation has already done. The second section only extends the laws of that territory to the particular territory in question—and this too the proclamation has already done. The only material difference in fact exists between the proclamation and this bill is that the proclamation contains the further and important provision for raising the troops and the money necessary for carrying it into execution. And here, sir, I will take the liberty to remark that I do not consider this bill the only one intended on this subject. This is a mere entering wedge—when this is passed Congress are committed to pass another providing the necessary military and pecuniary means to carry this act into execution. And indeed I should not be surprised, if before the close of the session, a bill were introduced to take possession of East as well as West Florida.

If the President had no power under the constitution to issue this proclamation, I think it equally clear he had none under any existing laws of Congress. The act of the 31st of October, 1803, authorising the President of the United States, to take possession of and occupy the territory ceded by France to the United States, by the treaty concluded at Paris on the 20th day of April, 1800, I apprehend expired on the 1st day of October, 1804; to which period it was limited by the 16th section of the act for erecting Louisiana into two territories, and providing for the temporary government thereof, passed the 26th day of March, 1804.

This section enacts that "the act passed the 31st day of October, 1803, entitled 'An act to enable the President of the United States to take possession of the territories ceded by France to the United States, by the treaty concluded at Paris on the 30th day of April, 1803; and for the temporary government thereof,' shall continue in force until the 1st day of Oct. 1804, any thing therein to the contrary notwithstanding; on which first day of October, this act shall commence, and have full force and shall continue in force for the term of one year, and to the end of the next session of Congress, which may happen thereafter." Let it be recollected that at the time this last mentioned act passed, the President had fulfilled his powers, under the act of the 31st of October, 1802, so far as it respected the taking possession of Louisiana. Possession had been actually and formerly delivered, and the stock created and transferred to the French government, according to the stipulation of the treaty. Besides the very nature and design of the act of the 26th of March, independent of the express limitation, superceded the act of the 31st of Oct.

But it is said, there are acts of Congress, which, though contemplating a present possession by a foreign authority, also contemplate an ultimate possession by the United States, under which the proclamation may be justified, even though the act of the 31st of October should have expired. The acts here referred to, I understand to be the act of the 24th of Feb. 1804, for laying and collecting duties within the territories ceded by France to the United States, the act mentioned of the 26th of March, erecting Louisiana into two territories, and the act of the 26th of March, 1805, authorising the establishment of a government in the territory of Orleans, similar to the government of the Mississippi territory. The President himself admits in his message at the opening of the session, that those laws contemplate a present possession in a foreign power; but he further says, they contemplate an ultimate possession by the United States. But let me ask what sort of possession? A possession by force? No, sir, not a single provision is shewn to justify such a construction. But possession to be obtained by friendly negotiation. I am warranted in this construction, not merely by the letter of those laws, but by the lapse of time since their enactment, but by the express declaration of Mr. Madison himself, while Secretary of State. It is a notorious fact, that when the act of the 24th of February passed, the Spanish C. Yrujo, then the minister of his Catholic Majesty at the United States, in a solemn protest against that law; and that Mr. Madison, by a letter dated on the 19th of March, ordered the marquis that the provisions relating to Louisiana "would not be extended beyond the acknowledged limits of the United States, until it could be rendered expedient by friendly elucidation and adjustments with his Catholic Majesty."

Upon the whole, sir, I have not been able to discover the shadow of authority, on the ground which the President issued this proclamation. It is recited none, amidst all his recitals, and it appears to me but his own mere will and pleasure.

The act I therefore cannot view in any other light than an unwarrantable assumption of power in violation of the constitution.

Considering then, sir, this act of the Executive as illegal and unauthorised, we are fully at liberty to enter into the discussion of the great question of title and expediency: a task which I will proceed to discharge to the best of my ability.

The first I propose to examine is the title of the United States to the territory in question. With respect to this, I perceive, it unfortunately happens that honorable gentlemen who support the bill do not precisely accord in sentiment. The gentleman from Vermont (Mr Bradley) has frankly conceded that the United States acquired no title under the treaty of St. Ildefonso. Another gentleman (Mr Smith of Md.) has declared that the United States did derive a title under that treaty and disclaims the title set up by the honorable gentleman from Vermont. I shall not undertake to decide which of the two gentlemen is right, if either be, but shall contend, and humbly expect to prove, that both are wrong.

What is the nature of the title set up by the gentleman from Vermont? Not under the treaty, he has candidly owned, but he supposes a title to exist on the ground of certain quaint principles of the common law, relative to the doctrines of *eviction* and *occupancy*. I am extremely happy, sir, to find that honorable gentleman introducing the common law as authority upon this floor, especially on so great an occasion. His doctrines certainly evince both research and ingenuity, and shew that he, like many with whom he acts, has not absolutely lost his veneration for the *black letter*. What are his doctrines? Why in the first place, he says, admitting that Spain did not cede Florida to France by the treaty of St. Ildefonso and admitting that France had no title to Florida on the 30th of April, 1803, when she ceded Louisiana to the United States, yet, as France has since acquired the title to the crown of Spain and her colonies, and as the French Plenipotentiary, when the treaty of April, 1803, was executed, did state and induce the American ministers to understand and believe that Florida was comprehended in the cession, why the title, though France had it not when the treaty was signed, yet having it subsequent, immediately attached in the United States, and France is estopped from saying any thing to the contrary. This argument, sir, begs every thing: 1st. That the declarations on the part of the French minister were made; 2dly, that being made they would operate to pass the title contrary to the express letter of the treaty; and lastly, that France has acquired a good title to the crown of Spain and her colonies. I will yield to the gentleman his first proposition and grant as he seems to desire it, that these representations were made—and what do they prove? Not that the title passed, but that the French minister was too deep for the American plenipotentiaries and, to use a jockey phrase, *took them in*. Sir, the only legal effect of such a fraud would be, to vitiate the treaty—to annul the contract. France, to be sure, would be bound upon principles of equity to refund the purchase money.

If then, sir, I am correct in stating, that no conversations or verbal declarations, however fraudulent, would operate to control or vary the plain letter and intent of the treaty, as appearing on the face of it, then upon the gentleman's own acknowledgements no title to Florida could have passed to the United States under the treaty of 1803. For the gentleman has unequivocally admitted that Florida was not ceded by Spain to France by the treaty concluded at St. Ildefonso, and France, it is admitted on all sides, by the treaty of 1803, only ceded to the United States Louisiana, as fully, and in the same manner as she acquired it from Spain by the treaty of St. Ildefonso; nor, sir, can I admit that France has acquired a legitimate title to the crown and colonies of Spain, which must also appear before the gentleman can avail himself of his argument. What, Mr. President, is the nature of this title? Was it obtained *bona fide* for a fair and full consideration? No, sir, but by the most abominable perfidy, corruption and duress, of which the pages of history furnish an example. Was not the royal family decoyed by artifice from Madrid to Bayonne? Was not the old monarch compelled to resign his crown to Ferdinand the 7th, and was not that Prince a prisoner of Bonaparte; and while in this condition, and, for aught we know, the bayonet at his breast, or the cup to his lips, constrained to resign his crown to the Emperor of France? Sir, what sort of title is this? Upon the eternal principles of justice, upon the principles of the common law and common sense, an instrument thus obtained is not obligatory on the party executing it.

But have the people of Spain acquiesced? No, sir; the instant publicity was given to the transaction they became indignant, and with one voice, resolved to resist this usurpation. To this hour they have not submitted.

But the gentleman has said that Spain is no longer able to hold Florida; that foreign emissaries will take it if the United States do not, and that it may be lawfully taken by the United States on the ground of the law of occupancy.

That title may be acquired by occupancy is not to be doubted. It is the mode by which title to property was originally acquired; but to obtain a title in this way the country must be vacant, uninhabited and not claimed by another proprietor. But in this instance is the territory vacant—or uninhabited—or abandoned by its proprietors. No, sir—The territory is either in the possession of Spain and claimed by her, or of the revolutionists, and if either be in possession, by the law of occupancy, you have no right to disturb them.—Clearly then, sir, upon the principles and admissions of the honorable gentleman from Vermont, the United States have no title to Florida.

And now, sir, with the indulgence of the Senate, I will proceed to consider as briefly as pos-

sible the nature of this title as derived under the treaty of St. Ildefonso. Here, it will granted, I meet the question fairly. This, I presume, is the title relied upon, as well by the Executive as the supporters of this bill.

In order fully to understand this subject, it is necessary to enquire into the principle cause of the war. The French were in the possession of the Mississippi, and claimed as part of Louisiana not only the country to the west of that river, but east as far as the Alleghany Mountain. France, having this claim, and being in possession of Canada, conceived the project of uniting Louisiana with Canada. To accomplish her purpose she established a line of posts from the Lakes to the Ohio, and commenced encroachments upon the then British colonies. These encroachments she was pressing so far that Great Britain perceived it would be necessary to repel them. This brought on the war of '56, which, after a bloody conflict of seven years, terminated disastrously to France and her allies, and resulted in the establishment of the Mississippi, the Iberville & the lakes Maurepas and Ponchartrain, as the boundary of Louisiana, giving to Great Britain all the territory on the east of that boundary except the island and town of New-Orleans, and to France all upon the west, including the island and town of New-Orleans.

A more particular examination of the results of this war is important. By it France lost Canada and most of her West India islands. Spain, the ally of France, lost Cuba. By the preliminary articles of peace between G. Britain, France and Spain, signed at Fontainebleau, and dated the 3d November, 1762, France renounced all pretensions to Nova Scotia, and guaranteed to his Britannic Majesty in full right, Canada, with all its dependencies. The 6th art. stipulates, "In order to re-establish peace on the most solid and lasting foundations and to remove every subject of dispute, with regard to the limits of the British and French territories on the continent of North America: it is agreed that for the future the confines between the dominions of his Britannic Majesty and those of his most christian majesty, (French King) in that part of the world, shall be irrevocably fixed by a line drawn along the middle of the river Mississippi from its source, as far as the river Iberville, and from thence by a line drawn along the middle of this river, and of the lakes Maurepas and Ponchartrain to the sea; and to this purpose, the most christian king cedes in full right, and guarantees to his Britannic majesty, the whole and part of Mobile, (now West Florida) and every thing that he possesses, or ought to have possessed on the left (east) side of the river Mississippi, except the town of New-Orleans, and the island on which it is situated, which shall remain to France. By the 18th art. Great Britain restores to Spain all that she had conquered in the Island of Cuba with the fortress of Havana. In consequence of which his Catholic majesty (king of Spain) by the 19th art. "cedes and guarantees in full right, to his Britannic Majesty, all that Spain possesses on the continent of North America, to the east or south east of the Mississippi, including Florida with fort St. Augustine and the Bay of Pensacola," (now consisting of East and a part of West Florida.) By the definitive treaty of peace and friendship between the kings of Great Britain, France and Spain, concluded at Paris on the 10th day of Feb. 1763, the preliminary articles were adopted, ratified and confirmed. By another treaty bearing date the 3d day of November 1762, the same day and year the preliminary articles are dated, as appears by the letter to M. L'Abbadie which I will presently refer to, France cedes Louisiana to Spain, together with the town and island of New Orleans. This last mentioned treaty has never been published, but the letter of the king of France to M. L'Abbadie recites the purport as well as the date of it. This letter purports to be an order signed by the king of France, dated at Versailles the 21st April, 1764, and directed to M. L'Abbadie, director general and commandant for his majesty in Louisiana. This letter was published at New Orleans in October, 1764, and circulated amongst the French inhabitants there.

It recites "By special act done at Fontainebleau, November 3, 1762, of my own will and mere motion, having ceded to my very dear and best beloved cousin the king of Spain, and to his successors, in full property, purely and simply, and without any exceptions, the whole country known by the name of Louisiana, together with New Orleans, and the Island in which the said city is situated; and by another act done at the Escorial, November 13, in the same year, his Catholic majesty having accepted the cession of the said country of Louisiana, and the city and Island of New Orleans, agreeably to the copies of the said acts, which you will find herewith annexed; I write you this letter to inform you, that my intention is, that on the receipt of these precedents, whether they come to your hands by the officers of his Catholic majesty or directly by such French vessels as may be charged with the same, you are to deliver up to the governor or officer appointed for that purpose by the king of Spain, the said country and colony of Louisiana, and the posts thereon depending, likewise the City and Island of New Orleans, in such state and condition as they shall be found to be in on the day of the said cession, willing that in all time to come they shall belong to his Catholic majesty, to be governed and administered by his governors and officers, and as possessed by him in full property without any exceptions."

From this document and treaties referred to, it appears that in the month of October, 1764, when the whole of Louisiana, with the island and town of New Orleans, was delivered to Spain, that Great Britain was in the peaceable possession of all the country on the east of the Mississippi. That with respect to Florida particularly, Great Britain was in possession, and no body dreamed at that time, that Florida either east or west was any part of Louisiana. Had it been so considered, under the orders of the French King, to deliver the whole of the province to Spain, undoubtedly Florida would have been delivered.

Immediately after the cession of '62-3, Great Britain took possession of all the country on the east of the Mississippi, except only the town and island of New Orleans, and in the year 1763 of 2, erected old Florida, Pensacola, the river and port of Mobile, &c. into two distinct provinces, under the name of East and West Florida, names which they have borne ever since. In 1783, at the close of our revolutionary war, Great Britain ceded to Spain East and West Florida, which, from that period to the present time, have been held by Spain under those names, as separate provinces from Louisiana. In the year 1800, when Spain was in possession of East and West Florida and Louisiana, and three several and distinct provinces, the famous treaty of St. Ildefonso was concluded, whereby Spain retroceded to France 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.—This treaty likewise has not been published, but the part just referred to is cited in the treaty between the United States and France of the 30th of April, 1803, whereby France cedes to the United States Louisiana, as fully and in the same manner as she acquired it of Spain by the treaty of St. Ildefonso, Spain delivered possession in pursuance of the treaty of St. Ildefonso to France, and France, in pursuance of the treaty of 1803, delivered possession to the United States, both powers receiving the country on the West of the Mississippi, with the island and city of New Orleans, like Spain originally received it from France, as the whole of Louisiana.

I have now, I believe, sir, given a full and I trust fair and correct statement of the evidences and facts relative to the question of title. A few remarks will close what I have to say on this head. The letter from the king of France to L'Abbadie is a very important document. It shews that the king of France, under whom we claim, and by whose admissions we are bound, so long ago as 1764, treated and considered the country on the west of the Mississippi as the whole of Louisiana. That, so considering it, he ceded and delivered it to Spain, together with the island and town of New Orleans, from which latter words it may be inferred that even the island and town of New Orleans were then considered a part of Louisiana. In 1800, when Spain cedes back the colony of Louisiana to France, that country was only known on the west of the Mississippi. The war of '56 and the treaties of '62-3 had fixed the line and obliterated forever the name of Louisiana on the east of that river.

The treaty of Ildefonso, of 1800, is a mere treaty of retrocession. The translation purports to be a treaty of cession it is true, but acknowledged on all sides to be erroneous. The original treaty was in the French language, and it is by that we are governed.—The expression in the original is "Sa Majeste Catholique promet et s'engage de son cote, a retroceder a la Republique Francaise, &c. A retroceder signifying to retrocede, to restore, or, to use a term familiar in the state I have the honor to represent, *re-convey* the colony of Louisiana to France; as it was when France conveyed it to Spain. The honorable gentleman Kentucky, (Mr. Pope) pressed by this argument, could only get round it by alleging that the original treaty between France and Spain was dated in 1761, prior to the settlement of the line and the cessions to G. Britain. But, unfortunately, he could not produce one title of authentic evidence to establish his position, a position absolutely negated by the official letter to M. L'Abbadie. But that gentleman has further told us, that from the words "with the same extent 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 other states," an intention may be raised to include Florida. I fully subscribe to the gentleman's rule, that we must give such a construction to the passage just referred to, as will give effect, if possible, to all the parts; and this, I apprehend, may be done without having recourse to the forced construction contended for. In the first place the two first members of the passage may be reconciled and have effect by considering them as a twofold description of the same territory. From abundant caution it is not uncommon to give various descriptions of the same object. Sometimes the name is simply used, sometimes it is described by metes and bounds, and sometimes by the names of the adjacent countries. Sometimes a twofold and sometimes a threefold description is given. And upon a critical examination I think it will be found that this is the only true construction that the instrument will bear. If you give it the construction the gentleman contends for, to wit, that the second member of the passage is an extension of the description given by the first, then the second includes the first, and of consequence the first would be nugatory