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Congressional.

SPANISH TREATY.

Debate on Mr. Clay's Resolution.

MR. LOWNDES' SPEECH.

If the house was called on to vote on this resolution, it was above all desirable that they should understand it. Mr. L. said that he thought he did understand it. Its meaning clearly was, that it was inexpedient to cede any part of the territory which we have west of the Sabine. Suppose our claim to that territory to be undoubted, said he, are we prepared to say, however worthless it may be—however essential or important to us? Now, for myself, I am not ready to say, that I am not willing to give up any thing west of the Sabine for any consideration whatever. If there be any territory of doubtful value beyond the Sabine, I am not prepared to say that there is in the rest of the world nothing of so much value that I might not be induced to exchange the one for the other.

Mr. L. therefore was opposed to engaging in this discussion, and because he considered the second resolve to embrace an object adverse to the interests of the country, as well as contrary to the spirit of the constitution. That this house, according to the view of the Speaker, might have some power in regard to treaties for the cession or acquisition of territory, he did not now mean to deny. But, whatever that power was, he thought that a just view of the principles of the constitution would necessarily require that it should be a restraining, and not a directing power. If, in progress of time, this house should adopt the practice of giving instructions to our ministers, or, what is the same thing, of determining bef rehand as now proposed, what should be yielded and what retained, the effect would be to divide the responsibility of the different departments of the government, and destroy altogether that of the treaty-making power. That there was in this house a corrective power, to restrain the treaty-making power in a course not believed to be beneficial to the interests of the country, he was ready to admit; but, whilst he admitted this, it was a power which, he said, ought to be exercised with great discretion. Otherwise, instead of restraining the Executive power, the effect would be, to increase its power by diminishing its responsibility. As a common rule of action, therefore, he was in favor of leaving the powers of the government where the constitution had placed them.

If any case could arise in which the Executive would pursue a policy so repugnant to the true interests of the country as to justify the in erposition of this house, Mr. L. said it would be one the very reverse of that now under consideration. It would hardly ever happen that an Executive would be averse of enlarging the boundaries of the nation, or be accused of a desire to restrict them to too narrow a limit. In the executive branch of every government, the disposition is naturally favorable to the extension of territory and the enlargement of its power. He thought that we may safely intrust to the Executive of this government the charge of supporting the rights of the country, and extending its territorial limits as far as justice and sound policy will allow.

Mr. L. made some remarks to shew that no advantage could result from the adoption of this resolve. If, indeed, it was proposed to employ force to support it, there might be some ground. Otherwise, he contended, to pass them would not only be useless, but injurious.

But, Mr. L. said, he would refrain from entering into the general questions of policy growing out of this resolution: but, in relation to the province of Texas, he would say that, if Florida were not necessary to us, and therefore a desirable acquisition, in exchange for any claim we may be supposed to have to Texas, he should not think it important to occupy Texas at this time. If we have a just claim to that province, the treaty being rejected, it will be at any time in our power to enforce it. Lying between us and Mexico, its destiny must always essentially depend on, as it is connected with American interests. Whatever claim we have to Texas, it is a claim which we are able to support and enforce. This is an opinion, said Mr. L. which the Speaker applies to Florida and I to Texas.

Mr. L. asked the members of the committee to cast their eye a little forward, and see, if the connection between Mexico and Spain should be disolved, what motive could Spain have for desiring to retain the possession of the Province of Texas. What has been her object in ceding Florida. To get in exchange a boundary, well defined, between Mexico and the United States. To secure herself against what she believes (and what Mr. L. feared all the powers of Europe believe) our ambition, she was willing to cede Florida. But, suppose the connection between Spain and Mexico to be dissolved: suppose all hope, on her part, of her resuming the control of that country was destroyed. what motive could she have for ceding Florida? Mr. L. said, he had not adverted to this contingency with a single view to her relinquishment of Florida to us, but with a view also to the preponderance which a reduction to a single island of the colonial possessions of Spain would give to another power; when Spain would no L nger be mistress of her own actions, but the agent to serve the interests of another power. And, if we relinquished now the acquisition of Florida in order to gain Texas, what, in the contingency just adverted to, when Florida was overflowed by Royalists, and the value of Cuba increased, what possible motive would Spain have, under such circumstances, for the cession of Florida to us? We must obtain it, then, by force, or not at all. But it would not always be as easy a matter as it may be now, to obtain Florida by force. It would be more easy, he said, to obtain Canada by force, than it would be to obtain Florida by force, if the power to whom it belonged was determined to hold it. It would be an error fatal to the best interests of the country, to refuse to receive Florida into our possession whilst we can. Mr. L. did not say it was so importan an acquisition that it ought not for any consideration to be postponed for a day; but that a combination of circumstances make that practical now which may not be a year or two hence, he thought was very clear.

He concluded, by saying, that he had had no intention of entering into the general discussion of these resolves. He meant only to shew, that they could not be discussed without giving so much time to the subject as could not be afforded at this time: and that the discussion would moreover be prejudicial to the public interests. Under these circumstances, he thought it his duty to move to lay the resolutions on the table.

Mr. Archer of Virginia, said, that the withdrawal of the motion of the gentleman from South Carolina, (Mr Lowndes) having removed the obstacle to discussing the resolutions under consideration, he would proceed to submit his views of them to the committee. The attention of this body, Mr. A. observed, was a species of joint stock concern, of which all its members were equally participant in interest. He now appeared, for the first time, to assert a claim to any share, and he did not doubt that the claim would meet with due allowance from the courtesy of the committee, unless, indeed, the fund on which it was addressed, had already been exhausted by the draf s which had been made upon it. One recommendation this claim would have, that it would not be an immoderate one. And, Mr. A. believed that the general remark, in reference to demands upon the public, that modera ion in their amount formed no unessential condition of their success, had, in no instance, stronger application, than in relation to demands addressed to the patience of this assembly.

Mr. A. adverted to the place which this subject of relations with Spain had recently occupied in the public attention, and the universal expectation that some measure expressive of the sense of Congress, would, before this period of the session, have been adopted. The measure, which, long delay, the gentleman from South Carolina, (Mr. Lowndes) had reported from the committee of Foreign Relations, had been recently wrested from the consideration of the House, in consequence of the suggestion of a foreign potentate, who, Mr. A. believed, was pretty much in the habit of exerting an operative influence in the affairs of other states, with the same disclaimer, it was probable, in every instance, of an intention to do so, which had been employed in relation to ourselves. If the motion which the gentleman from South Carolina had intimated an intention to renew, should prevail, a fate similar to that which had attended his own proposition would be reserved for the propositions now under consideration. Mr. A. confessed he felt surprise at the intimation of resort to such a course, both on account of the importance of the subject and the character of the proceeding itself: the subject involving, as it did, the policy of the alienation of perhaps the most valuable portion, in proportion to its extent, of the territory of the Union, was surely well entitled to consideration. from its magnitude. In this respect, it was to be regarded as second only to the question which had been connected with the discussion of the Missouri bill. to which, indeed, it bore a strong character of affinity. That question related to the propriety of the transfer of the common territorial property of the Union, to the exclusive benefit of the population of one portion of it. The question now presented, involved a consideration of the policy (which it was the purpose of the resolutions to counteract) of the transfer of the most valuable portion of this common property, to a foreign power. If a question, involving a consideration of great momentus character, had no claim to the maturest deliberation of the House, Mr. A. was unaware of any, which could be regarded as invested with such a claim. The effect, too, of the success of the motion of the gentleman from South Carolina, ought not to escape observation. It would be to preclude all effective expression of the public sentiment in relation to the policy of the ratification of the Spanish treaty The case had no resemblance to that of an ordinary postponement of a subject, the consideration of which might, at a succeeding session of Congress, be resumed. Every person knew that, before the ensuing session of Congress. the treaty would be ratified. The government of Spain could have no other design in sending the Minister who was known to have been despatched here. And the determination which would operate with our own government to accept the ratification, (unless this determination should be arrested by the expression of public sentiment in some mode) could not be a subject of question. The prevalence of the motion to lay the resolutions on the table, would then be decisive in relation to the important interest conceived to be involved in their adoption. By the policy of avoiding conflict, the fruits of complete victory would be achieved.

The Speaker had created the questions, presented by the resolutions, as affording scope for expatiation to a considerable extent in the general field of Spanish relations. This example, alluring as the subject was, from the variety and interest of the topics it involved, Mr. A. said that not having the same claims with the Speaker, on the attention of the committee, he should forbear to follow, and confine himself strictly to the questions arising on the resolution. These were of sufficient dignity and extent, indeed, to merit a distinct consideration.—The question presented by the first resolution was that which had heretofore given occasion to considerable discussion, relative to the character and extent of the treaty-making power in our government. To the President and Senate was given the power "to make treaties." To Congress were given various powers among others, that "to dispose of the territory of the United States." And the question was, whether the general power to make treaties, confined to the President and Senate, took place of the particular grant of powers to Congress, so as to operate conclusively on the subjects of this particular grant, without any necessity for the concurrence and assent of Congress.

In contemplating this question. the attention could not fail, Mr. A. said, to be attracted to the extravagance of the pretensions of this treaty making power. In point of extent, the power claimed to cover all the objects which fall within the scope of international stipulation, that is to say, all the objects of national interest, which were not of *essential municipal character*. This was the claim in point of extent of jurisdiction. In point of force of authority, the power claimed the exertion not only of a supereeding, *but a mandatory influence*, over the legislative department; the direct representatives of the national authority; in relation to all subjects of its exercise, whether comprehended or not, within the delegation of jurisdiction to that department of the government. The claim was not only to exclude Congress from all participation of control over subjects specifically submitted to its control by the constitution, but to bind it to an undeliberating ministerial execution of the stipulations of the President and Senate, in relation to these same subjects, wherever they might require the intervention of legislative details, and a resort to municipal authority, for their execution. The exertion of the power of the President and Senate was said by committing the public faith for its stipulations, to bind the other departments of the government, to an obligation of co-operation in the objects of those stipulations. Such was the claim of this treaty-making power in point of authority. The first remark, Mr. A. said, which arose upon this statement of the character of the power, related to its effect, where the co operation of legislative and Executive authorities were admitted to be required, to confound the appropriate functions of these authorities. To the President and Senate was assigned the exclusive faculty of exercising deliberation; and on Congress was imposed the unqualified duty of conforming. to. and effectuating without any exercise of discretion, the results of that deliberation.

Such an assignation of functions would present a case of political anomaly, which was not predicable of the character of the constitution. The entire exclusion of Congress from authority over the subjects assigned to the jurisdiction of the treaty-making power, would involve no political incontingency. This was designed in relation to all but a particular class of subjects. But, if the exertion of the legislative power were admitted at all, it could only be admitted in its proper character of a power *involving essentially* the exercise of discretion. The recognition, therefore, of the necessity for the co-operation of the authority of Congress in the execution of treaty stipulations, was, in relation to all the subjects to which it extended, a recognition of the legislative, as a part of, and a check upon, the treaty-making power.

Mr. A. had been adverting to a statement of the pretensions of this treaty-making power, as furnishing evidence sufficient, to his mind, to condemn them. If other evidence were wanted, it would be found in the discrepancy which the power in the extension claimed for it presented to the character of the general grant of power contained in the constitution and of the more important particular powers which made up the composition of that grant. It was to be expected of every political system, and more especially of a system sprung from men so illustrious for wisdom as the framers of our federal form of policy, that it would be found presenting a general consistency of structure and elements. But the constitution was admitted to convey but a limited grant of power. All its more important component powers, the power over the purse, over the sword, the power of punishment, were limited, by express restrictive or qualifying provisions. The admission of the treaty-making power, therefore, in the absolute unrestricted character it assumed to wear, would be a violation of the whole consistency of the constitution.

Mr. A. said that a person observing with any degree of attention, the progress of our government, could not fail to be struck with the conflict between many of the principles adopted in the construction of the Constitution, and its true character and intendment. The framers of this instrument had expended the resources of an incomparable wisdom, in devising limitation on the powers which it conveyed, and in the contrivance of adequate safeguards against the exercise of other powers. In the illusion of a generous confidence, they had no doubt conceived that these safeguards would be found sufficient. But, in the current of the administra-