



Once see the plans of fair & delightful Peace,
Unwar'd by party rage, to live like Brothers.

DEBATE

IN THE SENATE OF THE U. STATES,
on the subject of the
TERRITORY WEST OF THE PERDIDO.
Tuesday, December 27th.

(Continued from our last.)

MR. CLAY (from Kentucky).—It would have gratified me if some other gentleman had undertaken to reply to the ingenious argument which you have just heard. But not perceiving any one disposed to do so, a sense of duty obliges me, though very unwilling, to claim your indulgence whilst I offer my sentiments on this subject, so interesting to the Union at large, but particularly to the Western section of it. Allow me to express my admiration at the more than Aristidean justice, which, in a question of Territorial title between the United States and a foreign nation, induces certain gentlemen to espouse the pretensions of the foreign nation. Doubtless, in any future negotiations, she will have too much magnanimity to avail herself of these spontaneous concessions in her favor, made on the floor of the Senate of the U. States.

It was to have been expected, that in a question like the present, gentlemen, even on the same side, would have different views, and although arriving at a common conclusion would do so by various arguments. And hence the honorable gentleman from Vermont entertains doubts with regard to our title against Spain, whilst he feels entirely satisfied of it against France. Believing, as I do, that our title against both powers is indisputable, under the treaty of St. Idefonso, between Spain & France, and the treaty between the French Republic and the U. States, I shall not enquire into the treachery by which the King of Spain is alleged to have lost his crown; nor shall I stop to discuss the question involved in the overthrow of the Spanish monarchy, and how far the power of Spain ought to be considered as merged in that of France. I shall leave the honorable gentleman from Delaware to mourn over the fortunes of the fallen Charles. I have no commiseration for Princes. My sympathies are reserved for the great mass of mankind, and I own that the people of Spain have them most sincerely.

I will adopt the course suggested by the nature of the subject, and pursued by other gentlemen, of examining into our title to the country lying between the Mississippi and the Rio Perdido (which, to avoid circumlocution, I will call West Florida, although it is not the whole of it) and the propriety of the recent measures taken for the occupation of it. Our title depends, first, upon the limits of the province or colony of Louisiana, and secondly, upon a just exposition of the treaties before mentioned.

On this occasion it is only necessary to fix the Eastern boundary. In order to ascertain this, it is proper to take a cursory view of the settlement of the country, the basis of European title to colonies in America being prior discovery or prior occupancy. In 1682, La Salle migrated from Canada, then owned by France, descended the Mississippi and named the country, which it waters, Louisiana. About 1698, D'Iberville discovered by sea the mouth of the Mississippi, established a colony at the Isle Dauphine or Massacre, which lies at the mouth of the bay of Mobile, and one at the mouth of the river Mobile, and was appointed by France Governor of the country. In the year 1717, the famous West India Company sent inhabitants to the Isle Dauphine, and found some of those who had been settled there under the auspices of D'Iberville. About the same period Baloxi, near the Pascagoula, was settled. In 1719, the city of New-Orleans was laid off and the seat of the government of Louisiana was established there. In 1736, the French erected a fort on Tombigbee.—These facts prove that France had the actual possession of the country as far east as the Mobile at least. But the great instrument which ascertains, beyond all doubt, that the country in question is comprehended within the limits of Louisiana is one of the most authentic and solemn character which the archives of a nation can furnish. I mean the patent granted in 1612 by Louis the 14th to Crozat.—[Here Mr. Clay read such parts of the patent as were appli-

cable to the subject.*] According to this document, in describing the province or colony of Louisiana, it is declared to be bounded by Carolina on the East and Old and New Mexico on the West. Under this high record evidence, it might be insisted that we have a fair claim to East as well as West Florida against France at least, unless she has by some convention or other obligatory act, restricted the Eastern limits of the province. It has, indeed, been asserted, that by a treaty between France and Spain, concluded in the year 1719, the Perdido was expressly stipulated to be the boundary between their respective provinces of Florida on the East and Louisiana on the West; but as I have been unable to find any such treaty, I am induced to doubt its existence.

About the same period, to wit, towards the close of the seventeenth century, when France settled the Isle Dauphine and the Mobile, Spain erected a fort at Pensacola. But Spain never pushed her actual settlements or conquests farther West than the bay of Pensacola, whilst those of the French were bounded on the East by the Mobile. Between those two points, a space of about 13 or 14 leagues, neither nation had the exclusive possession.—The Rio Perdido, forming the bay of the same name, discharges itself into the gulph of Mexico between the Mobile and Pensacola, and being a natural and the most notorious object between them, presented itself as a suitable boundary between the possessions of the two nations. It accordingly appears very early to have been adopted as the boundary by tacit if not express consent. The ancient chart and historians therefore of the country so represent it. Dupratz, one of the most accurate historians in point of fact and detail of the time, whose work was published as early as 1738, describes the coast as being bounded on the East by the Rio Perdido. In truth, no European nation whatever, except France, ever occupied any portion of West Florida, prior to her cession of it to England in 1762. The gentlemen on the other side do not indeed strongly controvert, if they do not expressly admit, that Louisiana, as held by France anterior to her cessions of it in 1762, reached to the Perdido. The only observation made by the gentleman from Delaware to the contrary, to wit, that the island of New

* Extract from the Grant to Crozat, dated Fontainebleau, September 12, 1712.

“LOUIS, BY THE GRACE OF GOD, &c.
“The care we have always had to procure the welfare and advantage of our subjects, having induced us, &c. to seek for all possible opportunities of enlarging and extending the trade of our American colonies. We did in the year 1683 give our orders to undertake a discovery of the countries and lands which are situated in the northern part of America, between new France and New Mexico; and the Sieur de la Salle, to whom we committed that enterprise, having had success enough to confirm a belief that a communication might be settled from New France to the Gulph of Mexico by means of large rivers; this obliged us, immediately after the peace of Ryswick, to give orders for establishing a colony there and maintaining a garrison, which has kept and preserved the possession we had taken in the very year 1683, of the lands, coasts and islands which are situated in the Gulph of Mexico, between Carolina on the east and Old and New Mexico on the west. But a new war having broke out in Europe shortly after, there was no possibility, till now, of reaping from that colony the advantages that might have been expected from thence, &c. And whereas, upon the information we have received concerning the disposition and situation of the said countries, known at present by the name of the province of Louisiana, we are of opinion, that there may be established therein a considerable commerce, &c. we have resolved to grant the commerce of the country of Louisiana to the Sieur Anthony Crozat, &c. For these reasons, &c. we by these presents, signed by our hand, have appointed and do appoint the said Sieur Crozat to carry on trade in all the lands possessed by us, and bounded by New Mexico and by the lands of the English of Carolina, all the establishments, ports, havens, rivers, and principally the port and haven of the Isle Dauphine, heretofore called Massacre, the river of St. Louis, heretofore called Mississippi, from the edge of the sea as far as the Illinois, together with the river St. Philip, heretofore called the Missouri, and of St. Jerome, heretofore called Ouabache, with all the countries, territories, and lakes within land, and the rivers which fall directly or indirectly into that part of the river St. Louis.

The articles. 1. Our pleasure is, that all the aforesaid lands, countries, streams, rivers and islands be, and remain comprised under the name of the province of Louisiana, which shall be dependent upon the general government of New France, to which it is subordinate; and further, that all the lands which we possess from the Illinois be united, &c. to the general government of New France—and become part thereof, &c.”

Orleans being particularly mentioned could not for that reason constitute a part of Louisiana, is susceptible of a very satisfactory answer. That island was excepted out of the grant to England, and was the only part of the province east of the river that was so excepted. It formed in itself one of the most prominent and important objects of the cession to Spain originally, and was transferred to her with the portion of the province West of the Mississippi. It might with equal propriety be urged that St. Augustine is not in East Florida, because St. Augustine is expressly mentioned by Spain in her cession of that province to England; from this view of the subject I think it results that the province of Louisiana comprized West Florida previous to the year 1762.

What is done with it at this epoch? By a secret convention of the 3d of November of that year, France ceded the country lying West of the Mississippi, and the Island of New Orleans to Spain; and by a contemporaneous act, the articles preliminary to the definitive treaty of 1763 she transferred West Florida to England. Thus at the same instant of time she alienated the whole province. Posterior to this grant, Great Britain having also acquired from Spain her possessions east of the Mississippi, erected the country into two provinces, East and West Florida. In this State of things, it continued until the peace of 1763, when Great Britain, in consequence of the events of the war, surrendered the country to Spain, who for the first time came in the actual possession of West Florida. Well, how does she dispose of it? She re-annexes it to the residue of Louisiana—extends the jurisdiction of that government to it, and subjects the governors or commandants of the districts of Baton Rouge, Feliciana, Mobile and Pensacola, to the authority of the Gov. of Louisiana, residing at N. Orleans; whereas the Governor of East Florida is placed wholly without his control, and is made amenable directly to the Governor of the Havana. And I have been credibly informed that all the concessions or grants of land, made in West Florida, under the authority of Spain, run in the name of the government of Louisiana. You cannot have forgotten that about the period when we took possession of New Orleans, under the treaty of cession from France, the whole country rung with the nefarious speculations which were alleged to be practising in that city, with the connivance, if not actual participation of the Spanish authorities, by the procurement of surreptitious grants of land particularly in the district of Feliciana. West Florida, then, not only as France had held it, but as it was in the hands of Spain, made a part of the province of Louisiana; as much so as the jurisdiction or District of Baton Rouge constituted a part of West Florida.

What then is the true construction of the treaties of St. Idefonso, and April 1803, from whence our title is derived? If an ambiguity exist in a grant, the interpretation most favorable to the grantee is to be preferred. It was the duty of the grantor to have expressed himself in plain and intelligible terms. This is the doctrine not of Coke only (whose dicta I admit have nothing to do with the question) but of the code of universal law. The doctrine is entitled to augmented force when a clause only of the instrument is exhibited, in which clause the ambiguity lurks, and the residue of the instrument is kept back by the grantor. The entire convention of 1762, by which France transferred Louisiana to Spain, is concealed and the whole of the treaty of St. Idefonso, except a solitary clause: We are thus deprived of the aid which a full view of both of those instruments would afford. But we have no occasion to resort to any rules of construction, however reasonable in themselves, to establish our title. A competent knowledge of the facts, connected with the case, and a candid appeal to the treaties, are alone sufficient to manifest our right. The negotiators of the treaty of 1803 having signed with the usual ceremony two copies, one in the English & the other in the French language; it has been contended, that in the English version the term ‘cede’ has been erroneously used instead of ‘retrocede,’ which is the expression in the French copy. And it is argued that we are bound by the phraseology of the French copy, because it is declared that the treaty was agreed

to in that language. It would not be very unfair to enquire if this is not like the common case, in private life where individuals enter into a contract, of which each party retains a copy duly executed. In such case neither has the preference. We might as well say to France we will cling by the English copy, as she could insist upon an adherence to the French copy; and if she urged ignorance on the part of Mr. Marbois, her negotiator, of our language, we might with equal propriety plead ignorance on the part of our negotiator of her language. As this however is a disputable point, I do not avail myself of it; gentlemen shall have the full benefit of the expression in the French copy. According to this, then, in reciting the treaty of St. Idefonso, it is declared by Spain in 1800, that she retrocedes to France the colony or province of Louisiana, with the same extent that 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. This latter member of the description has been sufficiently explained by my colleague.

It is said that since France in 1762 ceded to Spain only Louisiana West of the Mississippi, and the island of New-Orleans, the retrocession comprehended no more—that the retrocession *ex vi termini* was commensurate with and limited by the direct cession from France to Spain. If this were true, then the description, such as Spain held it, that is in 1800, comprising also West Florida, and such as France possessed it, that is in 1762, prior to the several cessions, comprising also West Florida, would be totally inoperative. But the definition of the term retrocession, contended for by the other side, is denied. It does not exclude the instrumentality of a third party. It means restoration or reconveyance of the thing originally ceded, and so the gentleman from Delaware acknowledged. I admit that the thing restored must have come to the restoring party from the party to whom it is retroceded; whether directly or indirectly is wholly immaterial. In its passage it may have come through a dozen hands. The retroceding party must claim *under* and in virtue of the right originally possessed by the party to whom the retrocession takes place. Allow me to put a case: You own an estate called Louisiana. You convey one moiety of it to the gentleman from Delaware, & the other to me: he conveys his moiety to me, and I thus become entitled to the whole. By a suitable instrument I reconvey or retrocede the estate called Louisiana to you as I now hold it, and as you held it: what passes to you? The whole estate or my moiety only? Let me indulge another supposition—that the gentleman from Delaware, after he received his moiety, had bestowed a new denomination upon it and called it West Florida—would that circumstance vary the operation of my act of retrocession to you? The case supposed is in truth the real one between the United States and Spain. France in 1762 transfers Louisiana west of the Mississippi to Spain, and at the same time conveys the Eastern portion of it, exclusive of New Orleans, to Great Britain.—Twenty one years after, that is in 1783, Great Britain cedes her part to Spain, who thus becomes possessed of the entire province; one portion by direct cession from France, and the residue by indirect cession. Spain then held the whole of Louisiana under France and in virtue of the title of France. The whole moved or passed from France to her. When therefore, in this state of things she says, in the treaty of St. Idefonso, that she retrocedes the province to France, can a doubt exist that she parts with, and gives back to France, the entire colony? To preclude the possibility of such a doubt, she adds that she restores it, not in a mutilated condition but in that precise condition in which France and she herself possessed it.

Having thus shewn, as I conceive, a clear right in the U. States to West Florida, I proceed to enquire if the proclamation of the President directing the occupation of property, which is thus fairly acquired by solemn treaty, be an unauthorised measure of war and of legislation, as has been contended.

The act of October, 1803, contains two sections, by one of which the President is authorised to occupy the territories ceded to us by France in the A-

pril preceding. The other empowers the President to establish a provisional government there. The first section is limited in its duration; the other is restricted to the expiration of the then session of Congress. The act therefore of March, 1804, declaring that the previous act of October should continue in force until the first October, 1804, is applicable to the second and not the first section, and was intended to continue the provisional government of the President. By the act of 24th Feb. 1804, for laying duties on goods imported into the ceded territories, the President is empowered, whenever he deems it expedient, to erect the bay and river Mobile, &c. into a separate district, and to establish therein a port of entry and delivery. By this same act the Orleans territory is laid off, and its boundaries are so defined as to comprehend West Florida. By other acts the President is authorised to remove by force, under certain circumstances, persons settling or taking possession of lands ceded to the United States.

These laws furnish a legislative construction of the treaty, correspondent with that given by the Executive, and they vest in this branch of the Government indisputably a power to take possession of the country, whenever it might be proper in his discretion.—The President has not, therefore, violated the constitution and usurped the war making power—but he would have violated that provision which requires him to see that the laws are faithfully executed, if he had longer forbore to act. It is urged that he has assumed powers belonging to Congress, in undertaking to annex the portion of W. Florida between the Mississippi and the Perdido to the Orleans Territory. But Congress, as has been shewn, has already made the annexation—the limits of the Orleans Territory, as prescribed by Congress, comprehending the country in question. The President, by his proclamation, has not made a law, but has merely declared to the people of West Florida what the law is. This is the office of a proclamation, and that Territory should be thus notified. By the act occupying the country, the government, *de facto*, whether of Spain or the Revolutionists, ceased to exist, and the laws of the Orleans Territory, applicable to the country, by operation and force of law, attached to it. But this was a state of things which the people might not know, and every dictate of justice and humanity required, therefore, that it should be proclaimed. I consider the bill before us merely in the light of declaratory law.

Never could a more propitious moment present itself for the exercise of the discretionary power placed in the President, and had he failed to embrace it, he would have been criminally inattentive to the dearest interests of his country. It cannot be too often repeated, that if Cuba, on the one hand, and Florida on the other, are in the possession of a foreign maritime power, the immense country belonging to the United States, watered by streams discharging themselves into the Gulf of Mexico, (that is, one-third, nay more than two-thirds of the U. S. comprising all Louisiana) is placed at the mercy of that power.—The possession of Florida is a guarantee absolutely necessary to the enjoyment of the navigation of those streams. The gentleman from Delaware anticipates the most direful consequences from the occupation of the country. He supposes a sally from the Spanish garrison upon the American forces, and asks what is to be done?—We attempt a peaceful possession of the country to which we are fairly entitled: If the wrongful possessors under the authority of Spain assail our troops, I trust they will retrieve the lost honor of the nation in the case of the Chesapeake. Suppose an attack upon any portion of the American army within the acknowledged limits of the United States, by a Spanish force? In such event, there would exist but a single honorable and manly course. The gentleman conceives it ungenerous that we should, at this moment, when Spain is encompassed and pressed on all sides by the immense power of her enemy, occupy West Florida. Shall we sit by passive spectators, and witness the interesting transactions that tend to jeopardize, in the most imminent degree, our rights, without interference? Are you prepared to see a foreign power seize what belongs to us? I have heard, in the most credible manner, that about the time the President took this