Congreſs of the United States.

HOUSE OF REPRESENTATIVES.

Wedneſday, November 2.

The houſe took up the report of the committee on the bill making an appropriation for carrying into effect the 7th article of the Britiſh treaty.

An amendment, not affecting the principle of the bill being made at the inſtance of Mr. R. Griſwold and Mr. J. Randolph, the bill was ordered to a third reading to-morrow.

Mr. Nicholſon reported a bill ſupplementary to the act preſcribing the mode in which the public records in each ſtate ſhall be authenticated ſo as to be given in evidence in every other ſtate—from the committee appointed for ſaid purpoſe

Read twice and referred to a committee of the whole houſe to-morrow.

Mr. Mitchell called the attention of the houſe to a ſubject of conſiderable importance, growing out of our poſſeſſions on the Miſſiſippi. He ſtated that the mail to the Natchez was at preſent tranſported by a route circuitous & difficult of performance. The Cherokee country, which conſtituted a part of it, was ſo deſtitute of water and articles of ſubſiſtence, as to render it neceſſary for the conveyor of the mail to carry whatever himſelf or his horſe required. Even the water uſed was carried in goat ſkins. A great portion of the country was likewiſe infeſted with robbers. The meaſure he propoſed was to enquire by what means the carriage of the mail to the Natchez and New Orleans could be facilitated, ſo as to abridge the time now conſumed, and leſſen the dangers and difficulties attending the tranſportation. Mr. Mitchell believed a route might be purſued whereby 400 miles could be ſaved in the preſent diſtance to the Natchez. Mr. M. deſired ſuch an enquiry to be made into the means of accompliſhing this important object, as ſhould, while they tended to promote the geat political and commercial intereſts of the country, convince the Indian tribes that our object was not to invade their rights. He further obſerved that the uſual voyage to New Orleans was about thirty days. If the route by land ſhould be improved, that place might be probably reached in ten days. He therefore offered the following reſolution:

Reſolved, That the committee on poſt-offices and poſt roads be directed to enquire by what means the mail may be conveyed with greater facility and diſpatch, than it is at preſent, between the city of Waſhington, and the Natchez and New-Orleans.

Agreed to without a diviſion.

Thurſday, November 3.

Mr. Dawſon laid on the table a motion for continuing for years the act of April 1799 for augmenting the ſalaries of certain officers.

Mr. Jackſon obſerved that when he ſubmitted a reſolution for the application of one-twentieth part of the net proceeds of land ſold in Ohio, he did not expect there would exiſt that diverſity of opinion, which he had ſince learned did exiſt, in relation to the conſtruction of the ordinance for the government of the North-Weſtern Territory. In order to give time for ſuch a full inveſtigation of the ſubject, as might in its iſſue, be ſatisfactory to the ſtate of Ohio, he moved a poſtponement of the conſideration of the reſolution, until the 3d Monday in November.

Agreed to.

MONDAY, October 24, 1803.

Call for papers.

[*Continued.*]

Doctor Mitchell ſaid he roſe to expreſs his ſentiments againſt the whole body of the reſolution under debate. But his diſinclination to adopt it did not ariſe from any doubt of the right which the houſe poſſeſſed to call upon the executive for information. He had no heſitation to aſk the preſident for papers whenever it was neceſſary to obtain them. And it was equally clear to him that whenever that dignified officer was properly applied to, he would comply cheerfully with the requeſt of congreſs, or of either branch of it. He owned that in ſome caſes, it would be the duty of the houſe to purſue this mode of enquiry; and equally would it be the duty of the head of the executive department to give his aid and countenance.

In the preſent ſtage of the proceedings reſpecting the treaty and conventions with France concerning Louiſiana, he deemed it improper to embarraſs the buſineſs by an unſeaſonable call upon the executive for papers. The preſident had already communicated various information on this ſubject, in his meſſage on the firſt day of the ſeſſion. Additional information was given in his meſſage of the 21ſt, wherein he told the Houſe that the ratification and exchanges had been made. This was accompanied with inſtruments of ceſſion and covenant concluded at Paris between our miniſters and the agents af the French Republic. All this information we had already on our tables. This the preſident had put the Houſe in poſſeſſion of from his own ſenſe of duty. This obligation was impoſed on him by the conſtitution, which declares that he ſhall from time to time, give to congreſs information of the ſtate of the union, and recommend to their conſideration ſuch meaſures as he ſhall judge neceſſary and expedient. Mr. M. ſaid he had a firm belief that the preſident had complied with this conſtitutional injunction. He had communicated ſuch intelligence as he had received; and if he was poſſeſſed of any thing needful for the deliberations of the Houſe, he was willing to think, the chief-magiſtrate of the union would have ſpontaneouſly imparted it.

The gentleman from Connecticut, (Mr. Griſwold) however, ſays, that the ceſſion expreſſed in the treaty is no ceſſion at all, but a mere pretence. He ſays, that our title is derived from France, who has no title whatever to Louiſiana, & of courſe can convey none to the United States. He differed in opinion with that gentleman entirely. The treaty contained internal evidence enough for him to act upon. And it was accompanied with extrinſic events and circumſtances of great publicity. The united evidence of theſe we could not reſiſt without rejecting all human teſtimony, and ſinking into abſolute ſcepticiſm.

Let us review, ſir, what the ſum of this information amounts to. By the firſt article of the treaty which has ſo lately been laid before us, we have a recital of that part of the treaty of St. Ildefonſo, concluded October 1, 1800, whereby his Catholic Majeſty promiſes and engages to cede to the French republic, 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 treaty ſubſequently entered into between Spain and other ſtates. Here is a promiſe to cede; but the ſtipulation is accompanied with a condition, which, as is alledged by the mover of the reſolution, has never been performed. This condition, though not expreſſed at large in the firſt article, is well underſtood to be the eſtabliſhment of the duke of Parma, in the full and entire poſſeſſion of Tuſcany, and the making him a monarch, under the title of the king of the king of Etruria. This has been done in the face of all Europe. And the deliberations in the diet of Ratiſbon, concerning German indemnities, ſhew that the prince who was turned out of that country to make room for a younger member of the blood royal of Spain, was one of thoſe who ſuffered a loſs of dominion & revenue, when Italy was born down by the victorious arms of France. Mr. M. ſaid he would not enter into the details of European politics, nor dwell upon the ſplendid campaigns which had been made beyond the Alps.—He would only urge upon the attention of the houſe, that France had put the duke of Parma on the throne of Etruria, and had thereby acquired a title to Louiſiana. This was the conſideration or price, with which the American province was purchaſed from Spain. But the right of France to Louiſiana does not reſt here—it is not a *nudum pactum*; ſo far from it, effective meaſures have been adopted to carry it into operation, by adding poſſeſſion to right. A commiſſioner has been ſent to N. Orleans, on the part of the French republic, to receive the province of Louiſiana from Spain.—This officer has been received reſpectfully there. He has been officially recognized; and has had ſolemn induction & inveſtiture. He may be conſidered as completely in poſſeſſion, and enjoying, as far as the treaty requires, actual ſeizin of the country. If even a poſſeſſion by twig and turf was required, the French republic really ſeemed to have been permitted by the government of Spain to have ſuch a poſſeſſary eſtabliſhment. A title thus acquired, and accompanied by an allowed and peaceful poſſeſſion, is about to be granted to the United States. The proviſions to the completion of this object are ſtated in the fourth article of the treaty, which ſtipulates that there ſhall be ſent by 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 it in the name of the French republic to the commiſſary or agent of the United States.

An objection had been raiſed on the ground of the uncertainty of the limits of Louiſiana. He did not feel the force of this. In the ignorance in which the world was at preſent involved as to American geography, we ſhould indeed receive it *talis qualis*, ſuch as it was generally underſtood or uſually reputed to be. He perfectly well knew it had been very little explored, and far leſs travelled over by ſurveyors, with chain and compaſs. Uncertainty overhung the ſubject; but this would be diſſipated by degrees as the unknown regions ſhould be viſited and deſcribed. We might then proceed to adjuſt the limits in a manner ſimilar to that we had repeatedly adopted with reſpect to the preſent territory of the United States. As commiſſioners had been from time to time appointed to ſettle our boundaries on the ſouthern, north-eaſtern & north-weſtern frontiers, ſo might every geographical difficulty as to the extent of Louiſiana, be removed by commiſſioners acting under like authority and powers.

Previouſly, however, to receiving the perfect transfer and poſſeſſion on our part, it is neceſſary that we ſhould make arrangements to pay for it. For although by the ſecond article of the firſt convention, it is agreed that no money or ſtock ſhall be advanced before Louiſiana ſhall be taken poſſeſſion of in the name of the government of the United States; yet as no money can be paid but by virtue of appropriations made by law, it is incumbent on congreſs forthwith to declare, whether they will make the appropriation or not. If this appropriation is not made by law, there is an end of the treaty, and of all the expectations to which it has given riſe. On the other hand, if duly and promptly made, our government will be enabled, according to the promiſe contained in the 5th article, to receive from the commiſſary of the French republic all the military poſts of New-Orleans, and other parts of the ceded territory, and to ſee the troops of France and Spain who may be there, withdraw from the country and evacuate it.

Mr. M. thought that congreſs already poſſeſſed as much information as was requiſite to act with wiſdom and intelligence on the great queſtion before them.

Acknowledging, as he did, the right of the houſe to requeſt the preſident to give the copies of papers mentioned in the reſolution under debate; his oppoſition to it aroſe merely from the perſuaſion he felt that they were unneceſſary and ſome of them impoſſible to be had. Some papers were aſked for, which he was confident did not exiſt, in the hands of the preſident or any where elſe. It would be as agreeable to him, Mr. Mitchell ſaid, as to the mover of the reſolution, to examine theſe papers as matters of rational curioſity, or as documents of authentic hiſtory. But now was not the time for theſe ſecondary reſearches, however amuſing they might be. Graver ſubjects demanded our immediate attention, and there might be danger in delay. The operation of the reſolution, if adopted, would certainly be to procraſtinate and embarraſs; and he did not diſcern what good would be wrought *at that time* by agreeing to it.

There was an additional reaſon, and that a very weighty one, for refuſing the motion, at this time. By the terms of the treaty, it muſt be ratified in good and due form, and the ratification exchanged within ſix months after execution. The date of this deed of ceſſion is the 30th of April laſt. Conſequently the limited time would expire on the 30th of the current month. A doubt had been expreſſed by ſome gentlemen, for whoſe judgment he entertained great reſpect, whether the ratification would be conſummated in *good and due form*, unleſs the declaration and act of this houſe ſhould follow up the determination of the Preſident and Senate. Mr. M. therefore concluded, that as there were but a few days left to decide on the queſtion, which involved the ſovereignty of the Miſſiſſippi, and the adjacent country on both its banks, it would be better to proceed without delay to comply with all the pre-requiſites. At a future day, he would have no objection to amuſe his leiſure with the peruſal of the papers comprized in the reſolution; but at preſent, he thought the members had neither inclination nor time to ſpare.

Mr. M. therefore concluded by moving a poſtponement of the reſolution until the 30th day of May next. The motion being ſeconded.

Mr. Findley ſaid he was oppoſed to the poſtponement. He would rather face the reſolution and decide upon it at once. If this houſe thinks it expedient, they will ſay ſo; if they think it inexpedient, they will manifeſt their opinion. He was one of thoſe who conſidered the reſolution as neither neceſſary nor expedient. It was not pretended that we yet had eitheir territory or people to govern; but we were required to carry a treaty into effect that would give us both territory and people. Doubts had been ſuggeſted of the validity of our title; but ſhall doubts be put in competition with official papers? It was not, however, his intention to detain the houſe with a diſcuſſion of this point on which ſufficient had been already ſaid; but to notice an alluſion made to the proceedings of a former congreſs. It was proper that they ſhould be correctly underſtood. When he looked around him, he did not ſee more than eight or ten members of the houſe at the time referred to. It has been ſaid by a gentleman from Maſſachuſetts, (Mr. Thatcher) that the Houſe, in the caſe of the Britiſh treaty, claimed to decide on treaties. In anſwer to this obſervation, he begged leave to read the reply of the Houſe to the meſſage of the preſident; firſt obſerving that the conteſt was reſpecting the diſcretion of the houſe, not to agree to treaties, but to grant money for carrying them into effect. On that occaſion, it had been contended there was no ſuch diſcretion. The following are the proceedings on that occaſion:

"The houſe, according to the order of the day, reſolved itſelf into a committee of the whole houſe on the meſſage from the preſident of the United States, aſſigning the reaſons which forbid his compliance with the reſolution of this houſe of the 24th ultimo, requeſting a copy of the inſtructions, correſpondence and other documents, relative to the treaty lately concluded between the United States and Great-Britain, and after ſome time ſpent therein, Mr. Speaker reſumed the chair and Mr. Muhlenberg reported, that the committee had, according to order, again had the ſaid meſſage under conſideration and come to two reſolutions thereupon, which he delivered in at the clerk's table, where the ſame were read as follow:

"*Reſolved*, That it being declared by the ſecond ſection of the ſecond article of the conſtitution, "That the preſident ſhall have power, by and with the advice and conſent of the ſenate, to make treaties, provided that two-thirds of the ſenators preſent concur," the houſe of repreſentatives do not claim any agency in making treaties; but that when a treaty ſtipulates regulations on any of the ſubjects ſubmitted by the conſtitution to the power of congreſs, it muſt depend for its execution as to ſuch ſtipulations, on a law or laws to be paſſed by congreſs; and it is the conſtitutional right and duty of the houſe of repreſentatives, in all ſuch caſes, to deliberate on the expediency or inexpediency of carrying ſuch treaty into effect, and to determine and act thereon as in their judgment, may be moſt conducive to the public good."

This reſolution was carried by a majority of 57 to 35. From this ſtatement it was evident that the point at that day in diſpute was not whether the houſe had a right to ratify treaties, but whether they had a right to grant money; that is, whether they had not the ſame diſcretion on this as on other occaſions. Mr. Finley concluded by obſerving that he was himſelf prepared, with the information before them to carry the preſent treaty into effect.

Mr. Griſwold ſcarcely believed the gentleman from New-York (Mr. Mitchell) ſerious in his motion to poſtpone this reſolution. If ever it was proper to decide it, it was certainly proper to decide it now. If ever the information requeſted was granted, it was for the purpoſe of legiſlating correctly on the ſubject of the meſſage.—If it is not wanted, the houſe will not heſitate to negative the reſolution. In my judgement, ſaid Mr. Griſwold, it is wanted for the purpoſe of legiſlating correctly on thoſe ſubjects that are before us. I am one of thoſe, who do now believe, and always have believed that the excluſive right of forming treaties reſides in the preſident and ſenate; and that, when ratified, it is the duty of every department of the government to carry them into effect. This treaty then, if fairly and conſtitutionally made, is a law of the land, and we are bound to execute it. But it is neceſſary to know its nature and effects to carry it into execution. If it is a mere dead letter, there is no neceſſity for any laws whatever.—Thence the neceſſity of knowing preciſely its nature and effects, before we are able to paſs the neceſſary laws for carrying it into effect. Gentlemen will not deny this. If the treaty itſelf is in theſe reſpects uncertain, they will admit the neceſſity of having recourſe to other documents to decide what we are to do to carry it into effect. In my judgment the treaty is uncertain. I am not able to ſay from the light it ſupplies, whether we acquire by it new territory, or ſubjects, or if the gentleman from Virginia pleaſes, new citizens; though I have always underſtood that all perſons living under every deſcription of governments were bound to obey it, and of courſe were ſubjects, and that the term was as applicable to a republic as to monarchy. Will gentlemen ſay that it is not neceſſary to aſcertain the nature and effects of this treaty, in order to legiſlate correctly reſpecting it? What does the preſident ſay in his meſſage? He ſays, "it is for your conſideration whether you will not forthwith make ſuch temporary proviſions for the preſervation, in the mean while, of order and tranquility in the country, as the caſe may require." He calls upon us forthwith to legiſlate. If we have acquired the country and people, it is certainly proper to paſs laws for the preſervation of order and tranquility; but if we have acquired neither, whence the neceſſity of paſſing ſuch laws? It would be improper; it would be uſurpation. We contend that the treaty does not aſcertain theſe points; gentlemen differ from us in opinion. But I beg them calmly and ſeriouſly to attend to its language. By the firſt article it appears that Spain promiſed to cede Louiſiana to France on certain ſtipulations; ſhe *promiſes* to cede. Gentlemen cannot miſtake the import of the language. It is a promiſe, not a ceſſion. Will it be ſaid that France acquired any title by this promiſe? This cannot be contended. The treaty does not declare whether the terms ſtipulated by France have been complied with, or whether the ceſſion was actually made. The terms of the treaty are, "whereas, in purſuance of the treaty, and particularly of the third article, the French republic has an inconteſtible title, &c." Will gentlemen ſay that this aſſertion, on the part of France, gives her a title? It gives her no title. An aſſertion by France cannot affect Spain.

But, ſay gentlemen, France has ſtipulated the ſending a commiſſary to receive Louiſiana from Spain, and tranſmit it to us. What is the amount of this engagement? It is an engagement to receive and tranſmit. But ſuppoſe France do not ſend a commiſſary, or Spain refuſes to deliver the country. If gentlemen are correct in the conſtruction they gave to the firſt article, to wit, that we have acquired a good title, will not the houſe hold the language of the gentleman from Maryland, (Mr. Nicholſon) and ſay, what do we care for Spain! I therefore conſider the fourth article as amounting to nothing. This conſideration enforces the motion I have had the honor to ſubmit; becauſe, if it ſhall turn out that we have acquired good title, and if the treaty ſhall appear to be fairly and conſtitutionally made and ratified, we have a right, in virtue of every principle of the law of nations, to enforce our title.

The preſident has called upon us forthwith to paſs laws for the preſervation of order and tranquility in this territory. Should we not then ſeriouſly enquire into the validity of our title? for we have no right to exerciſe juriſdiction over it, if our title is not rightful. Suppoſe France had ceded to us the iſland of G. Britain. Would the mere ceſſion give us the right to the ſoil and juriſdiction of that country? Before we paſs the laws that are alledged to be neceſſary, we ought to aſcertain whether the people of Louiſiana owe us allegiance as their rightful ſovereigns.

Gentlemen ſay, though they are content to call for the treaty of Ildefonſo, there are other parts of the reſolution to which they cannot aſſent, and particularly that which relates to Spain. In one view this information is important. If it ſhews the conſent of Spain to the ceſſion to us, it is equivalent to an abandonment, ſo far as relates to us, of the ſtipulations made to her by France, and all that remains for us to do, is to organiſe a government over the people of that territory. But if Spain refuſes her conſent, and remains in poſſeſſion, and I always underſtood till this day that ſhe does remain in poſſeſſion, it may be neceſſary to reſort to other meaſures. For that purpoſe I have thought it proper to call for papers that may aſcertain the diſpoſition of Spain. As to the expreſſion "deed of ceſſion," it may not, perhaps, be the moſt apt; and it will be perfectly agreeable to me to ſubſtitute the word "inſtrument," if that ſhall be more agreeable to gentlemen. I beg leave to add that with regard to all theſe documents, no doubt can be entertained of their being in the poſſeſſion of the Executive. When realiſing this important purchaſe, he certainly felt it important to know whether the nation ſelling had a right to ſell; and that right muſt have depended upon the treaty of 1800. Let not gentlemen aſcribe to me the leaſt wiſh to pry into the ſecrets of ſtate. This meaſure cannot be fairly ſo conſtrued. The treaty of Ildefonſo muſt be a public treaty from the nature of it. As to the correſpondence with the government of Spain, I ſhould preſume that that cannot be ſecret. But if the preſident will ſay that Spain has aſſented to, or diſſented from the treaty of ceſſion, that will be ſufficient for me. For theſe reaſons I deem the adoption of the reſolution at this time important, and that it is conſequently improper to poſtpone it to a future day. I preſume gentlemen are deſirous to carry this treaty into effect without delay. I am not the leaſt diſpoſed to fruſtrate their wiſhes; and when theſe documents ſhall be received, if gentlemen permit them to be received, we ſhall be enabled immediately to decide whether the treaty calls for any particular laws to carry it into execution.

Mr. Randolph ſaid, that when the gentleman from Connecticut introduced the reſolution it ſtruck him as being irregular, but as it had not received any animadverſion from the chair, and as he felt greatly diſpoſed to favor the utmoſt latitude in debate, eſpecially on the part of the other ſide of the houſe, he offered no objection to the courſe which had been purſued; altho' it appeared to him that, this ſubject being in poſſeſſion of the committee of the whole houſe, it would have been more regular to have moved a previous diſcharge of that committee, or to have offered the reſolution in that committee, by way of ſhewing that it was not expedient to paſs the neceſſary laws for carrying the treaty into effect. This was not the only caſe in which a queſtion had been diſcuſſed on incidental points, rather than on its own merits. It had become almoſt habitual with the houſe to decide the principal queſtions before them, by debating others of a preliminary nature. He hoped therefore he ſhould be excuſed in following the extenſive but devious track of the gentleman from Connecticut. He declared himſelf entirely at a loſs how to reconcile the theory and practice of that gentleman. He confeſſed that he had rather have ſeen him come boldly forward and deny the propriety of carrying the treaty into effect, than fighting behind entrenchments which cramped his exertions, whilſt they did not cover him from that charge of inconſiſtency aga[illegible] which he vainly endeavored to ſhield him[illegible]lf. Mr. R. regretted therefore that the gentleman had given any previous pledge which tended at this time, to fetter his oppoſition to the treaty. He felt himſelf at a loſs how to underſtand an expreſſion which had been repeatedly and emphatically uſed—"if the treaty were conſtitutionally ratified." The executive informs us that this inſtrument has received the ſanction of the ſenate, and yet the ſcepticiſm of gentlemen is ſo extreme, that they cannot argue from the fact, but put the caſe hypothetically. Do they ſuppoſe the ratification to have been informal and incomplete?

Mr. Griſwold explained. He ſaid he would merely inform the gentleman what he had thought and intended to expreſs, viz. that if the treaty be conſtitutionally made and ratified, that houſe was bound to carry it into effect.

Mr. Randolph continued---"If it be conſtitutionally made and ratified." Really, ſir, this is the age of ingenious diſtinction. Unfortunately I am too dull to comprehend how a treaty can be conſtitutionally ratified, which is not conſtitutionally made. If, however, it be conſtitutionally made and ratified, the gentleman acknowledges himſelf bound to carry [illegible] into effect; and yet he wants document[illegible] To prove, what?---That the treaty is con[illegible]ſtitutional?—to clear up doubts of this nature?—Not at all; not to decide whether we have a treaty which contravenes th[illegible] proviſions of the conſtitution, but to de[illegible]termine whether we have any treaty at a[illegible] We muſt firſt ſee whether we have acqu[illegible]ed territory and inhabitants to govern [illegible]fore we can paſs the neceſſary laws giv[illegible] effect to the treaty; although by the g[illegible]tleman's own ſhewing, we muſt paſs [illegible] laws for carrying the treaty into eff[illegible] (provided they do not violate the co[illegible]tution) even if it ſhould be found that [illegible] have acquired neither territory nor inha[illegible]ants. According to the gentle[illegible]an's [illegible]trine, we muſt make good the ſtipulat[illegible] into which the executive may have e[illegible]ed, in the name of the nation, whe[illegible] we have acquired any thing in retu[illegible] not. To what purpoſe then is thi[illegible]quiry made? But we are told that en[illegible] is neceſſary to enable us to aſcertai[illegible] proper mode of effecting the deſired [illegible] to determine us whether (as a gentl[illegible] from Maſſachuſetts, Mr. Thatcher [illegible]ſaid) we ſhall march a body of ſol[illegible] or civilians, to take poſſeſſion of L[illegible]ana. But was it neceſſary to dete[illegible] the mode of taking poſſeſſion, before [illegible] would reſolve to take poſſeſſion at a[illegible] the houſe would previouſly decide [illegible] queſtion; if they would come to a [illegible]lution that it was expedient to tak[illegible]ſeſſion, that reſolution would be re[illegible] to a ſelect committee to prepare a [illegible] conformity to it, and when that bill [illegible] be under their conſideration, it wo[illegible] proper to determine whether we [illegible]ſend ſoldiers, or civilians, to New O[illegible] From the zeal which that gentlema[illegible]