Congress of the United States.

HOUSE OF REPRESENTATIVES.

Tuesday, October 25.

[*Mr. Randolph's speech concluded.*]

Mr. R. said that he would not dilate upon the importance of the navigation of the Mississippi which had been the theme of every tongue — which we now possessed unfettered by the equal claim of the nation holding the west bank, — a fruitful source of quarrel; — but he would call the attention of the committee to a report which had been made at the last session and to which publicity had lately been given.

I am not surprised, Mr. chairman, that in a performance so replete with information, a single error should be discovered, especially as it does not affect the soundness of its conclusion. As long ago as the year 1673, the inhabitants of the French province of Canada explored the country on the Mississippi. A few years afterwards (1685.) La Sale, with emigrants from old France, made a settlement on the bay of St. Bernard, and at the close of the 17th century, previous to the existence of the Spanish colony of Pensacola, another French settlement was made by the governor D'Ibberville at Mobile and on the Isle Dauphin or Massacre, at the mouth of that bay. In 1712, a short time previous to the peace of Utrecht, Louis XIV. described the extent of the colony of Louisiana (by the settlements) in his grant of its exclusive commerce to Crozat. Three years subsequent to this, the Spanish establishment at Pensacola was formed, as well as the settlement of the Adais on the river Mexicana. After various conflicting efforts on both sides, the bay and river Perdido was established, (from the peace of 1719) as the boundary between the French province of Louisiana on the one side, and the Spanish province of Florida on the other; this river being nearly equi-distant between Mobile and Pensacola. Near the close of the war between England and France, rendered memorable for the unexampled success with which it was conducted by that unrivalled statesman, the great lord Chatham, Spain became a party on the side of France. The loss of the Havanna and other important dependencies, was the immediate consequence. In 1762, France, by a secret treaty of contemporanous date with the preliminary treaty of peace, relinquished Louisiana to Spain as an indemnity for her losses sustained by advocating the cause of France. By the definitive treaty of 1763, France ceded to England all that part of Louisiana which lies east of the Mississippi, except the island of New-Orleans: the rest of the province to Spain. It is to be observed that altho' France ostensibly ceded this country to England, virtually the cession was on the part of Spain: because France was no longer interested in the business, but as the friend of Spain, (having previously relinquished the whole to her) and because in 1783, *restitution* was made by England, not to France, but to Spain. England having acquired this portion of Louisiana, together with the Spanish province of Florida, annexed to the former that part of Florida which lies west of the Apalachicola and east of the Perdido; thereby forming the province of West-Florida. It is only in English geography, and during this period, from 1763 to 1783, that such a country as West-Florida is known. For Spain having acquired both the Floridas in 1783, reannexed to Louisiana the country west of the Perdido subject to the governor of N. Orleans, and established the ancient boundaries of Florida; the country between the Perdido and the Apalachicola being subject to the governor of St Augustine. By the treaty of St. Ildefonso, Spain cedes to France "the province of Louisiana with the same extent that it now has in the hands of Spain," viz. to the Perdido— "and that it had when France possessed it,"—to the Perdido—"and such as it should be after the treaties subsequently entered into between Spain and other powers,"—that is saving to the United States the country given up by the treaty of San Lorenzo. We have succeeded to all the rights of France. If the navigation of the Mississippi alone were of sufficient importance to justify a war, surely the possession of every drop of water which runs into it; the exclusion of European nations from its banks, who would have with us the same causes of quarrel, did we possess New-Orleans only, which we have had with the former possessors of that key of the river;—the entire command of the Mobile and its widely extended branches, scarcely inferior in consequence to the Mississippi itself;—watering the finest country and affording the best navigation in the United States; surely these would be acknowledged to be inestimably valuable.

But it is dreaded that so widely extended a country cannot subsist under a republican government. If this dogma be indisputable, I fear we have already far exceeded the limits which visionary speculatists have supposed capable of free government. This argument, so far as it goes, would prove that instead of acquiring, we ought to divest ourselves of territory. If the extent of the republics of Greece, or of Switzerland, of antient or modern times is to be our standard, we shall dwindle indeed. They have formed the basis of most theories on this subject. The acquisition of the country west of the Mississippi does not reduce us to the necessity of settling it now or for a long time to come. It will tend to destroy the cause of Indian wars, whilst it may constitute the asylum of that brave and injured race of men.

Mr. R. concluded by apologizing for detaining the committee so long. He was sorry that he had been unable to compress his remarks into a smaller compass.

Mr. Joseph Lewis said that on a question so important it was proper that his vote should be accompanied by his reasons.—With the gentleman from New-York, (Mr. Griswold) he entertained doubts as to the constitutionality of the treaty, and if those doubts should be removed, he should vote for carrying it into effect. The part of the treaty to which he referred was in the 7th article, in the following words:

"As it is reciprocally advantageous to the commerce of France and the United States to encourage the communication of both nations for a limited time in the country ceded by the present treaty, until general arrangements relative to the commerce of both nations may be agreed on; it has been agreed between the contracting parties, that the French ships coming directly from France or any of her colonies, loaded only with the produce and manufacture of France or her said colonies; and the ships of Spain coming directly from Spain or any of her colonies, loaded only with the produce or manufactures of Spain or her colonies, shall be admitted during the space of two years in the port of New-Orleans, and in all other legal ports of entry within the ceded territory in the same manner as the ships of the United States coming directly from France or Spain, or any of their colonies, without being subject to any other or greater duty on merchandise, or other or greater tonnage than that paid by the citizens of the United States."

In opposition to this part of the treaty, he found in the constitution of the United States this declaration: "No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another."

It was on this point that he entertained doubts, which he wished might be removed. His honorable colleague (Mr. Randolph) had not removed them; so far from removing, he had confirmed them.

Mr. Lewis was free to declare that his only objections were as to the unconstitutionality of the treaty: and should any gentleman remove them, he would not object to voting for carrying the treaty into operation; but unless they were removed, he must vote against it.

Mr. Randolph, in explanation said that he thought he had suggested that the preference referred to was a legal and not a constitutional difficulty.

Mr. Lewis. Still the gentleman has not removed my difficulty. Congress possesses no power to give a commercial preference to one state over another; and if the ships of France and Spain are permitted to enter New-Orleans on terms more advantageous than they are permitted to enter other ports of the United States, it is a palpable violation of the constitution.

The gentleman from Virginia has also told us that this preference is to be considered as the price paid for the ceded territory. I am astonished at this observation. As I understand the treaty, we are to take possession of Louisiana within three months from the ratification of the treaty; and as soon as taken into our possession, a specific sum is to be paid for it, on which being done it becomes our sole property. If then we give a great advantage to the port of New-Orleans, not enjoyed by other ports, I say such preference will be a palpable violation of the constitution. For it must be evident to every mind that such a preference will operate against every state in the union. For if the ships of France and Spain are permitted to enter New-Orleans upon better terms than any other ports, they can afford to bring the productions of those countries into New-Orleans much cheaper than into any other ports of the United States. These are my only objections; if removed I shall have no difficulties; but until they are removed, I must be opposed to the resolution before the committee.

Mr. Griffin said that upon a subject so important, and so deeply interesting to his country, it would be unpardonable in him, and evince a direlection of duty, to give a vote without assigning his reasons. On referring to the treaty and the constitution, and comparing their provisions, considerable apprehension had arisen in his mind; and he seriously feared the consequences of a collision between them. As he was only in search of truth, and as it was his sincere wish that all his apprehensions and doubts should be removed, he would take the liberty of stating his doubts on the constitutionality of the treaty.

In the 7th article of the treaty were these words *(quoting the words recited by the last speaker, as above stated)* This was evidently a commercial regulation. If a commercial regulation—and such he deemed it—the president and senate have undertaken to form commercial regulations for the ceded territory.

In the 8th section of the first article of the constitution, power is given to *congress* "to regulate commerce with foreign nations." Is not then this treaty stipulation, made by the president and the senate, in direct contravention of this constitutional investiture of power in congress? The constitution says, "*Congress* shall have power to regulate commerce with foreign nations." Who are congress? The senate and house of representatives. If then the president and senate make a treaty for the regulation of commerce, they infringe the constitution, by doing that which congress alone can do. Thus then have the president and senate, in their executive capacity, legislated, and thereby infringed the rights of this house as a branch of the legislature.

In the same 7th article of the treaty we find that "French ships coming directly from France or any of her colonies, loaded only with produce and manufactures of France or said colonies; and the ships of Spain coming directly from Spain or any of her colonies, loaded only with the produce manufactures of Spain or her colonies, shall be admitted during the space of two years in the port of New-Orleans, and in all other legal ports of entry within the ceded territory in the same manner as the ships of the United States coming directly from France or Spain, or any of their colonies, without being subject to any other or greater duty on merchandise or other or greater tonnage than that paid by the citizens of the United States."

In the 9th section of the 1st article of the constitution we find, "No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another." He was correct, he believed, in stating, that under the present regulations of trade, Spanish vessels pay 50 cents per ton, while American vessels paid only 6 cents. Here then the president and senate undertake to destroy this provision made by law. For according to the treaty, Spanish and French vessels entering the ports of New-Orleans will hereafter pay only 6 cents a ton; while similar vessels coming to all the other ports of the United States will be obliged to pay 50 cents a ton. The difference between six and fifty constitutes the preference given to New-Orleans.

Feeling these doubts most forcibly, he could not consent to the resolution until they were completely removed. He did not let his opposition to discuss the merits of the treaty, or to go at large into the consequences which it might produce. He did, however, touch those consequences; he feared the effects of the vast extent of our empire; he feared the effects of the increased value of labor, the decrease in the value of lands, and the influence of climate upon our citizens who should migrate thither. He did fear, tho' this land was represented as flowing with milk and honey, that this Eden of the new world would prove a cemetary for the bodies of our citizens.

[*Here follows Mr. Purviance's Speech, which was published in the Federal Gazette of Saturday last.*]

Mr. Elliott. Mr. Chairman, altho', in the short time since I have had the honor of a seat on this floor, I have several times risen in debate, that circumstance scarcely diminishes my diffidence at the present moment; uneducated in the schools, and unpractised in in the arts of Parliamentary eloquence, it is with no inconsiderable degree of diffidence that I rise upon the present occasion. There are occasions, however, where even the eye of timidity should sparkle with confidence; and there are questions in the discussion of which the finger should be removed from the lip of silence herself. And such is every occasion and every question involving the existence, the infraction, or even the correct and just construction of that constitution, which is the palladium of our privileges, and the temple of our glory. If I might be permitted to borrow a metaphorical expression from one of the most celebrated commanders of antiquity, who declared that he intended to spread all his sails, on the ocean of war, I would say that it is with fear and trembling I presume to launch my little feeble bark, on the vast ocean of eloqnence and literature *(pointing to the federal members)* by which I am surrounded. If however the remark be just, that it is even sweet and glorious to die for one's country, surely the humbler sacrifice of native diffidence may with propriety be expected and exacted from a juvenile American representative.

Whatever minuter shades or minor differences of opinion may exist among the American people, there is one point in which we shall all meet with cordial unanimity. We all unite in an ardent devotion to the constitution. He who is not devoted to it is unworthy of the honorable name of an American. I lament that it is necessary to speak particularly of myself, but duty, not only to myself, but to my constituents, a numerous and respectable section of the American people, demands it. It may be objected to me, and with truth, that there has been a time when I professed sentiments hostile to some of the most important provisions in the constitution. It was not, however, at the time when the constitution was submitted to the people. I was then in infancy and obscurity, deprived of the means and even of the hopes of education. I had yet read much and reflected more. My ardent & excursive eye had wandered rapidly over the wide field of antient history—I tho't I beheld my country, like the Roman republic in the age of Cato, the sport of every wind and of every wave. As far as I understood the constitution I admired it, and wished for its adoption. But when an elegant anonymous writer predicted, as the consequence of its adoption that "liberty would be but a name, to adorn the short historic page of the halcyon days of America," I trembled and shuddered for the possible consequences. If in the plenitude of *juvenile* self-sufficiency, (and who has not been young?) I have since fancied that I could form a more perfect constitution, that dream of the imagination has long been past. Long have I been sincerely and ardently attached to the constitution.

I foresee that I shall be led into a wide field, and that I shall long, *too long*, occupy the attention of the committee. Will the committee hear me? I imagine that I read a favorable answer in the countenances of all its members. I shall be interrupted by no unpleasant indications of impatience, by no loud calls for the question.

The treaty before us is of immense consequence, and my attention was early turned to the subject. From the moment of my election, I have devoted many studious and laborious hours to the subjects connected with it, and I have anticipated all the objections against it; none of those presented this day by the gentleman from New-York, who opened the debate, or by the gentlemen who followed him on the same side, have struck my mind as novel. The question of the constitutionality of the treaty first presents itself. It is said to be unconstitutional, because it enlarges the territory of the United States. To reduce the arguments of gentlemen on this head to a syllogistic form, they would not strike the mind with great force. The constitution is silent on the subject of the acquisition of territory; by the treaty we acquire territory; therefore the treaty is unconstitutional. It has been well remarked by an eminent civilian, that those are not the most correct and conclusive reasoners, who are very expert at their *quiddits*, their *atquis* and their *ergos*; but those, who, from correct premises, by just reasoning, deduces correct conclusions. This question is not to be determined from a mere view of the constitution itself, although it may be considered as admitted that it does not prohibit, in express terms, the acquisition of territory. It is a rule of law, that in order to ascertain the import of a contract, the evident intention of the parties, at the time of forming it, is principally to be regarded. This rule will apply, as it respects the present question, to our constitution, of which it may be said, as the great doctor Johnson said of the science of the law, that it is the last result of human wisdom acting upon human experience. The constitution is a compact between the American people for certain great objects expressed in the preamble *(Mr. E. here read the preamble)* in language to which eloquence and learning could add no force or weight. Previous to the formation of this constitution there existed certain principles of the law of nature and nations, confirmed by time and experience, in conformity to which this constitution was formed. The question before us, I have always believed, must be decided upon the law of nations alone; and under this impression I have examined the works of the most celebrated authors on that subject.

I recollect a time, sir, when a foreign minister in this country, at a moment when genius, fancy, and ardent patriotism, were lords of the ascendant over learning, wisdom, and experience, spoke of the law of nations and its principles as mere worm-eaten authorities, and aphorisms of Vattel and others. I also recollect that the illustrious man, who is now president of the United States, was then secretary of state, and that he delivered the unanimous sentiments of the American people when, in his reply to that minister, he observed that something more than mere sarcasms of that kind was necessary to disprove those authorities and principles; and that, until they were disproved, the American nation would hold itself bound by them. This is the man, sir, who has been so injuriously calumniated within these walls this morning, and upon whom such a torrent of bitter eloquence has been poured by the gentleman from North-Carolina (Mr. Purviance) a gentleman who is himself a model of eloquence, uniting all the excellencies of Cicero and Demosthenes, and all other orators, ancient and modern.

The American people, in forming their constitution, had an eye to that law of nations, which is deducible by natural reason, and established by common consent, to regulate the intercourse and concerns of nations. With a view to this law the treaty-making power was constituted, and by virtue of this law, the government and people of the United States, in common with all other nations, possess the power and right of making acquisitions of territory by conquest, cession or purchase. Indeed the gentlemen who deny us the right of acquiring by purchase, would probably allow us to keep the territory, were it obtained by conquest.

Colonies, or provinces, are a part of the eminent domain of the nation possessing them, and of course are national property; colonial territory may be transferred from one nation to another by purchase; this purchase can be effected by treaty alone, as nations do not, like individuals, execute deeds, and cause them to be recorded in public offices; that department of the government of the nation purchasing, which possesses the treaty making power generally, is competent to make treaties for that purpose. These positions are established by the laws of nations, and are applicable to the case before us. [Here Mr. E. read a variety of extracts from Vattel to establish these positions, and observed that they were corroborated by Grotius, Puffendorff, and other eminent writers on the laws of nature and nations, whose works he had consulted.]

A mere recapitulation, and that not a tedious one, of these principles and authorities, will now answer the present purpose. Colonies have always been considered as national property, although the law or practice of nations, in this instance, may not conform to the law of nature.—Greece treated her colonies with peculiar indulgence; Rome considered any privileges which hers were suffered to possess, as mere matters of grace, not of right. The one was a natural and tender parent, the other a cruel stepmother. Yet I have no recollection that the Grecian colonies in Asia Minor, Italy or even at Ionia, were represented in the Amphyctionic council, the general assembly of the states of Greece. The claim of the British colonies, which now constitute the United States, to be represented in that body by which they were taxed, though just in itself, was novel and unwarranted by the practice of nations. Thank God the claim was successful, and in consequence of it, we are now here as the representatives of the American people, deliberating upon their most important interests. It is unnecessary to reiterate the other positions; they are undeniable in themselves, and their applicability to the present case will hardly be disputed. If the treaty be extremely pernicious, or has not been extremely pernicious, or has not been made by sufficient authority, or has been made for unjust purposes, it is void by the laws of nations.

[*Speech to be continued.*]

RASTADT, September 5.

Doctor Haug, of this city, has received the following interesting letter from doctor Carro, of Vienna, dated the 23d of August.

"A discovery which will excite your astonishment, as well as that of the whole world, has been made by two physicians, a Mr. Aubon of Constantinople, and a Mr. Lafond, of Salonichi, a city in Macedonia. The experiments made by these two medical men have a perfect though merely accidental coincidence; and those made by both give the assurance, *that the vaccine matter is a sovereign prevention for the ravages of the plague.* The proofs of Mr. Aubon are, that of 6000 persons, inoculated by him with the vaccine matter in Constantinople, not one has been attacked by the plague; that children who had been thus inoculated, were expressly put to the breast of their mothers, while struggling with the plague, and nevertheless escaped all infection; that an Italian physician, at present in Turkey, solely for the purpose of gathering observations on the plague, from a conviction that the vaccine matter prevented infection, went fearlessly into the hospitals, and conversed with and touched persons dangerously ill of the disorder, without the smallest consequence; that in the villages bordering on Constantinople, where the cow-pox is prevalent, the plague had made no progress: that when any inhabitants of those villages caught the infection in another place, and returned home, he either died or recovered, without infecting any other person; and that, lastly, the confidence of the Arminians in this preventive was so unbounded, that numbers annually underwent the vaccine mode of inoculation expressly to guard against the plague.

CHERBURGH, Sept. 8.

The works in the road here are carried on with the greatest activity, and directed by Mr. Cachin with as much intelligence as zeal. The dike will procure the means of sheltring 50 ships of the line, and will thus form a port which has so long been wanting to oppose the English in the Channel, and which will be superior to all those which nature has given to England. This dike situated between Fort Querqueville & the Island of Pelee is composed of blocks of stone, some of them forming cubes of 60 feet and 12,000 pound weight.

The commission appointed in the year 1792, gave up the project of the 17 cones that had been placed in the port, & which since the year 1787 had been found insufficient to resist the force of the ocean. The remains of the last but one are still to be seen to the eastward. The dike is already 36 feet above the bottom of the road, and 7 feet under low water mark, which is 43 feet from the bottom. But in the centre they are constructing a part 300 feet in length, which will be elevated 75 feet from the bottom, and 9 above high floods, on which will be planted 30 pieces of cannon and 12 mortars. This part is already advanced to 57 feet, and will be finished by next spring. Forty boats are daily employed in bringing stones: they carry from 3 to 5 toises each. The two forts, which flank the road, added to this battery, will guarantee Cherburg from every attack.—To finish the dike, 270,000 cubic toises of stone are still wanting, they will cost about 14 millions, but will be finished in about 3 years. Independently of this beautiful road, there will be a port dug in the mountain, which will contain 25 ships of the line, and about 3000 workmen are now employed on it.

A little vessel belonging to this port called La Dame Francise with five men on board, was taken by an English privateer on her return to Saint Malo, when the captors put four sailors and an officer on board. The captain of La Dame Francaise, a little man of four feet eight inches high, ran up to the English officer and snatching out one of the pistols which the latter carried in his girdle, blew his brains out, and having incapacited the English sailors from injuring him, he brought his vessel happily into Cherburg. After having thus signalized himself, he has solicited letters of mark against the English.

From the report of the commissioners, appointed by the king of Denmark to promote the introduction of variolus inoculation, it appears, that, at the end of the year 1802, 6489 persons had been inoculated with the cow pox, in the Danish dominions.

NEW-YORK, November 7.

The ship Mary, Cummings, from Jamaica, for London, with a cargo of rum and sugar, is cast away at Martin's Reef; cargo partly saved.

Arrived since our last,

Ship Washington, Gibbs, 37 days from Rotterdam. Sailed in company with ship America, of Newport, bound to Virginia. October 25th, in lat. 38, 9, long. 56, spoke ship Perseverance, Cnrystal, from North-Carolina, for Cork, out 29 days; who had lost his main-top-mast, and sprung his main-mast in a severe gale from the north-west.

Ship Live Oak, Dyer, 37 days from Rotterdam. Left there, ship Warren.