From the New-York Evening Post.

The Louisiana Treaty.

[*Continued.*]

In our last we promised to give a sample of the manner in which the Democrats spoke of the secrecy observed by the federal executive previous to the ratification of the former treaty. No man who has the least share of recollection can forget how constantly their prints were loaded with the bitterest execrations, against the president on this score. The Philadelphia newspapers and pamphlets were distinguished for their virulence. One of the writers (understood to be a man in Mr. ******'s confidence) denounced Gen. Washington as the "Pretender." "To touch the hem of the garment (said he) of this *fabled* High Priest of Liberty, would beget distress in such interested bigots; but to strip him of his pontifical robes, and show him unworthy of them, would be in their estimation, to dress nature in mourning, and extinguish the lamp of liberty forever. When men have purposes to answer, nothing can be too absurd for them to practise; and hence the Egyptian priest to favor his own views, had conferred divinity upon an OX. It is high time, that superstitious veneration for a man, and a frail one too, should be exiled from the mansion of liberty." But a still better specimen of their rancorous opposition is found in the following extract from the resolutions of the Franklin Society of South Carolina:

"Resolved, that we view with surprise the industry used not to disclose the articles of Mr. Jay's treaty, *affecting and practising all the secrecy of monarchy so opposite to open and republican principles.*---Will it dare to be contended, that the people have no right to ask, nay, to *demand* information on the posture of their affairs?---Secrecy robs them of this right and makes *twenty* greater than the *whole*. Is this republicanism? Is this liberty?--Monarchs and conclaves make a trade of secrecy---*it suits their designs*, but neither monarchs nor conclaves are, as yet in unison with the sentiments, nor the wishes of the American people. There is no authorised secrecy in our government, and to infer such a right from the practices of other nations, is a prostitution of Republican principles,—The constitution of the United States, gives to the president and senate the power of making treaties, but it communicates no ability to hatch those things in darkness. A treaty! which is to be the supreme law of the land! and yet the people not to be informed of the terms of this law until binding upon them! until the opportunity for amendment is past."

Having insisted upon it that the president ought to be impeached off-hand for his violation of the spirit of the constitution in the above particulars, they finished with recommending in the most urgent language, that the constitution should be immediately so amended, that in future no treaties should be ratified without the concurrence of the house of representatives. The following will serve to shew the sentiments inculcated on this head by the good democrats of that day, who little dreampt that their artifices and delusions would, so soon, give them a majority in the senate as well as the house:

"Resolved, That as the power of finally making and ratifying treaties by the president and two-thirds of the senate alone, has, in the present case, been proved to be of a most alarmingly dangerous nature; that our very existence as a free people, had been put at stake; that had not a good providence influenced even the *twenty* of the senate to reject *one* article, which, *from necessity*, must arrest the hand of the president from signing it, we say, that had not the providential care, which we have so often experienced, interposed, we had been a lost, an undone people, without pity, and without friends!

Therefore, resolved, That our members be earnestly called on, at the next meeting of the assembly, to propose an amendment to the federal constitution, so far as respects the power of making treaties. That a president, and twenty senators, perhaps fourteen (for that number makes a quorum) shall have the sole power of making treaties, which must be necessarily, the supreme law; must be binding on every individual, which swallows up the sovereignty and independence of each state! No! the people now see the folly of giving such a power into the hands of fourteen men, which, at all times, may supercede every existing law in the union! 'tis too much! Without a disposition to judge uncharitably of men, we say 'tis possible that twenty or fourteen men may be tempted, may be bribed to betray the precious trust reposed in them by their fellow-citizens! Then 'tis *possible* that twenty or fourteen men may be led to sell even their country! We, therefore, again urge it on our representatives, to bring forward an amendment, by which, *congress at large, and congress alone*, shall have the power of forming treaties, at least, of *ratifying* them. We venture to pronounce the people will not be satisfied short of this: from one extreme of the continent to the other, this will be the universal language. We know, in framing the federal constitution, the objection to giving the house of representatives this power jointly with the senate and president, was, *that negociations generally required the greatest secrecy, and that was not to be expected from so large a body*. Curse on such secrecy! it has undone our country! An American assembly, aloof from the combinations of Europe, should have no secrets! No government in the known world, like our's, ever gave such an extensive latitude as we allow to the president and senate; even the most arbitrary kings never possessed any thing like it!

In our next we shall see in what respects their conduct has been in conformity to the language they held.

Having taken a cursory view of the objections urged by the democrats to the manner in which the British treaty was formed, it now remains to ask whether they have themselves practised what they then insisted on to be the sense of the constitution?

First; they said that it was the duty of the executive to lay before the senate all his intentions and instructions respecting a negociation, before the negociation itself was commenced or the negociator appointed. But when Mr. Munroe was appointed last winter, the president did not expose his instructions to the senate, nor did he even hint to that honorable body what were his intentions. Nay, he went a length in his secrecy on this occasion which was never heard of before in this country since the formation of the constitution. He took measures to procure a grant of two millions of money from the house of representatives, which, it has within a few days come out, was to be applied to the express purpose of furthering the treaty in question, and on the occasion, no scruple at all was felt to resort to what the good patriots formerly called "*the secrecy of monarchy, so opposite to open and republican principles.*"

Secondly; on the former occasion it was insisted on that the not publishing the treaty for the examination of the *people*, previous to its being discussed by the senate, was "*a proof that the senate conceived it disgraceful and prejudicial to the United States.*"---Certainly the Louisiana treaty has not been submitted to the people before its ratification; and are the democrats willing now to abide by their own reasoning? Will they admit that the reason why the treaty has not been published before its discussion by the senate was because that body conceived it to be disgraceful and prejudicial to the United States?"

Thirdly; what has become of the amendment they then pledged themselves to bring forward to alter the constitution, so that "*congress at large, and congress alone*," should have the power of forming treaties, or at least of ratifying them?" Let it not be for a moment understood that we advocate this democratic notion. No: we know it to be foolish, impracticable and absurd; we merely mean to exhibit to the people a glimpse of the consistency of their good friends in power. With the sage Washington we maintain that "the necessity of caution and secrecy is a cogent reason for vesting the power of making treaties in the president, with the advice and consent of the senate; the principal on which that body was formed, confining it to a small number of members." Once for all, we say, that hitherto we have been only reviewing the difference between the conduct of democrats out of power and in power, and we repeat it, we claim no credit on the part of the federalists for not going the same lengths in opposition that they did; but we now approach a point where we shall not only convict them of acting in direct opposition to all they formerly maintained, but guilty of the most shameless and unwarrantable abuse of power in withholding necessary information from the representatives of the people. But this in our next.

[*To be continued.*]

Congress of the United States.

HOUSE OF REPRESENTATIVES.

Tuesday, October 25.

Debate on the Louisiana Treaty.

[*Continued from Saturday's Gazettee.*]

Mr. R. Griswold called for the reading of two resolutions which had been referred to the committee of the whole, and after the same had been read, he observed: That the two resolutions which had been read from the chair, explained in some detail, the measures, with which the general resolution, for carrying into execution the treaties, was to be followed up. In deciding therefore, on the general resolution, it became necessary to keep in view, the measures which were to result from it, that if we were not satisfied with these, we might give our votes accordingly.

The second resolution declares that it is expedient to provide by law for governing the ceded territory; and if gentlemen are not prepared to do this, or to provide the stock contemplated by the first resolution, they cannot agree to the general proposition under immediate consideration.

Before entering however into a consideration of these points, I think it proper, said Mr. G. to say, that I have been one of those, who have long felt the importance, to this country, of the free navigation of the Mississippi, and of a place of deposit at some place near the mouth of that river. I deem the enjoyment of that navigation and deposit, indispensible to the prosperity of our western brethren; and there are few sacrifices I would not cheerfully make, consistent with the constitution, to place those important privileges and rights beyond the reach of foreign controul. The opinion which I now express has been of long standing and has not been weakened by any events which have recently taken place. So fully was I impressed at the last session, with the importance of these claims, that I was persuaded, very vigorous measures ought to have been adopted, for vindicating and securing rights, which had been grossly violated. But whilst I again repeat, that the importance of our rights on the Mississippi, has not been diminished in my view, it is necessary to declare, that I can never consent to secure this object, however desirable and important, by means, which shall set at defiance the constitution of my country.

It may not be improper, said Mr. G. in this place, also to declare, that I have been one of those who have long believed that the power of making treaties belongs exclusively to the president with the consent of the senate, and that a treaty, when constitutionally made and ratified, becomes a law, and must be executed accordingly. But it is essential to the existence of a treaty that it should be consistent with the constitution, in every respect—both as it regards the subject matter, and the form of ratification. If a treaty is repugnant to the constitution either in the matter of which it treats, or in the form of ratification, it cannot be considered, within the meaning of the constitution, a treaty. It is not within the words of the constitution "made under the authority of the United States,"—it is a dead letter, and void. If it shall then be found, that the instrument under consideration, contains stipulations which the constitution does not warrant, it will result, that it cannot be respected as a treaty—that congress, so far from being bound to carry it into execution, are obliged by their duty and their oaths, to support the constitution, and to refuse their assent to laws which go to infringe this great charter of our government.

Having made these preliminary remarks, and in some measure explained the general principles by which I shall consider it my duty to test the treaty, I will again call the attention of the committee to those parts of the instrument, which have been noticed by other gentlemen, and which have equally excited in my mind, doubts of its constitutionality.

The 3d article of the treaty is thus expressed:

"The inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, according to the principles of the Federal constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

By this article it is declared, "that the inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible according to the principles of the constitution to the enjoyment of all the rights, advantages and immunities of citizens of the United States." It is perhaps somewhat difficult to ascertain, the precise effect which it was intended to give the words, which have been used in this stipulation. It is however clear, that it was intended either to incorporate the inhabitants of the ceded territory into the union, by the treaty itself, or to pledge the faith of the nation, that such an incorporation should take place, within a reasonable time. It is proper therefore to consider the question with a reference to both constructions.

It is in my opinion scarcely possible for any gentleman on this floor to advance an opinion, that the president and senate may add to the members of the union by treaty whenever they please, or in the words of this treaty, may "incorporate in the union of the United States" a foreign nation, who, from interest or ambition, may wish to become a member of our government. Such a power would be directly repugnant to the original compact between the states, and a violation of the principles on which that compact was formed. It has been already well observed, that the union of the states was formed on the principle of a co-partnership, and it would be absurd to suppose that the agents of the parties, who have been appointed to execute the business of the compact, in behalf of the principals, could admit a new partner without the consent of the parties themselves. And yet, if the first construction is assumed, such must be the case under this constitution, and the president and senate may admit, at will, any foreign nation into this co-partnership without the consent of the states.

The government of this country is formed by an union of states, and the people have declared that the constitution was established "to form a more perfect union of the United States." The United States here mentioned cannot be mistaken. They were the states then in existence, and such other new states as should be formed within the then limits of the union, conformably to the provisions of the constitution. Every measure, therefore, which tends to infringe the perfect union of the states here described, is a violation of the first sentiment expressed in the constitution. The incorporation of a foreign nation into the union, so far from tending to preserve the union, is a direct inroad upon it—it destroys the perfect union contemplated between the original parties, by interposing an alien and stranger to share the powers of government with them.

The government of the United States was not formed for the purpose of distributing its principles and advantages to foreign nations. It was formed with the sole view of securing those blessings to ourselves and our posterity. It follows from these principles, that no power can reside in any public functionary to contract any engagement, or to pursue any measure which shall change the union of the states. Nor was it necessary that any restrictive clause should have been inserted in the constitution, to restain the public agents from exercising these extraordinary powers; because the restriction grows out of the nature of the government. The president, with the advice of the senate, has undoubtedly the right to form treaties, but in exercising these powers he cannot barter away the constitution, or the rights of particular states. It is easy to conceive that it must have been considered very importent, by the original parties to the constitution, that the limits of the United States, should not be extended. The government having been formed by an union of states it is supposeable that the fear of an undue, or preponderating influence in certain parts of this union, must have had great weight in the minds of those who might apprehend that such an influence would ultimately injure the interests of the states to which they belonged: and although they might consent to become parties to the union, as it was then formed, it is highly probable they never would have consented to such a connexion, if a new world was to be thrown into the scale, to weigh down the influence which they might otherwise possess in the national councils.

From this view of the subject, I have been persuaded that the framers of the constitution never intended that a power should reside in the president and senate to form a treaty by which a foreign nation and people shall be incorporated into the union, and that this treaty so far as it stipulates for such an incorporation is void.

But it has been said, that the treaty does not in fact incorporate the people of the ceded territory into the union, but stipulates that they shall be incorporated, und admitted, according to the principles of the federal constitution—or in other words, the treaty only pledges the faith of the nation that such an incorporation shall take place. On this point, I will observe, that there is no difference in principle, between a direct incorporation by the words of a treaty, and a stipulation, that an incorporation shall take place; because if the faith of the nation is pledged in the latter case, the incorporation must take place, and it is of no consequence whether the treaty gives the incorporation or produces the law which gives it; in both cases, the treaty produces the effect: And the question still returns does there exist under the constitution, a power to incorporate into the union by a treaty or by a law, a foreign nation or people? If it shall be admitted that no such power exists, without an amendment to the constitution, and it shall be said, that the treaty making power, may stipulate for such an amendment, it will be a sufficient answer to say, that no power can reside in any of the national authorities to stipulate with a foreign nation for an amendment to the constitution. The constituted authorities of our union have been created to execute the constitution, not to change, or stipulate for changing it, and they can in no case, lay the states under the smallest obligation to make the smallest change. Stipulations therefore of this nature, which create no obligation, are void.

Again, it cannot be said, that the stipulations for this incorporation, are constitutional and valid, because it is declared that the inhabitants of the ceded territory are to be admitted to the rights of citizens, according to the principles of the constitution; because if, as has been contended, there is no principle in the existing constitution, by which they can be incorporated, the stipulation and treaty is not only void, but absurd.

A gentleman from Pennsylvania however (Mr. Smilie) has said, that it is competent for this government to obtain a new territory by conquest, and if a new territory can be obtained by conquest, he infers, that it can be procured in the manner provided by the treaty. Whilst I admit the premises of the gentleman from Pennsylvania, I deny his conclusion. A new territory and new subjects may undoubtedly be obtained both by conquest and by purchase; but neither the conquest nor the purchase can incorporate them into the union. They must remain in the condition of colonies, and be governed accordingly. The objection to the third article is not that the province of Louisiana could not have been purchased, but that neither this, or any other foreign nation, can be incorporated into the union by treaty, or by a law, and as this country has been ceded to the United States only under the condition of an incorporation, it results that, if the condition is unconstitutional or impossible, the cession itself falls to the ground.

Although I am unwilling to detain the committee at this late hour, and wish not to delay the wishes of the majority, yet I must be permitted again to refer the committee to the seventh article of the treaty. This article declares that the ships of France and Spain, together with their cargoes, being the produce or manufacture of those countries, shall be admitted into the ports of the ceded territory, on the same terms, in regard to duties, with American ships It is certainly worth the consideration of the committee, whether this article is consistent with the provisions of the constitution. As our laws now stand, the ships of France and Spain are liable to an extra tonnage duty, and their cargoes to a duty of 10 per cent. advance, when arriving in the Atlantic ports. The treaty declares that in the parts of the ceded territory, this extra duty of impost and tonnage shall cease. The treaty does not, and probably cannot, repeal the law, which lays this extra duty in the Atlantic states, but those duties must still be collected. The constitution however declares in the 8th section of the first article, "that all duties, imposts and excises shall be uniform throughout the United States;" and in the 9th section of the same article it is said that "no preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another." By the treaty, however, the uniformity of duties is destroyed, and by this regulation of commerce contained in the treaty, a preference is certainly given to the ports of the ceded territory over those of the other states.—Gentlemen who advocate the constitutionality of the treaty will scarcely say, that the ceded territory is no part of the United States, and not embraced by the provisions of the constitution, because such an assertion, whilst it avoided one difficulty, would plunge them into another, equally fatal, and prove that the third article is void, and of course that the cession itself is a nullity.

The gentleman from Virginia (Mr. Randolph) has said that the discriminating duties of impost and tonnage are not a constitutional but a statute regulation. This is undoubtedly true, but it must be recollected that the statutes are in force, and so long as they remain unrepealed, the preference is given to the ports on the Mississippi and the uniformity of duties is violated; and it cannot, most assuredly, be correct, to violate a principle of the constitution for a day, under the expectation of curing the violation by a legislative interference. If, however, it is really intended in this sideway manner to bring about a repeal of discriminating duties, I hope it may at this time be so understood. The commerce of this country, and particularly that of the northern states, has long flourished under these protecting duties, and it would be extraordinary indeed if a treaty should be formed, laying the government under an obligation to repeal laws so essential to our commercial prosperity.

Before I dismiss this part of the subject it may not be improper to consider some points which have been started by a gentleman from Massachusetts (Mr. Crowninshield) in regard to the effect which the 7th article of the treaty must produce upon the commerce of the eastern states.—The remarks which I shall submit upon these points, will apply only to the policy of the stipulation; but they may have some effect on those gentlemen who feel themselves at liberty to decide at large on the merits of the treaty, and they appear to be necessary in reply to the gentleman from Massachusetts, to whose opinions I cannot subscribe.

It has appeared to me, that the stipulation in the 7th article, must be highly injurious to the trade of the eastern states.—The ships of France and Spain are to be admitted into New-Orleans, on the same terms with our own ships. The discriminating duty therefore in respect to them, in that port, is virtually repealed. But we obtain no repeal of the countervailing duties in French and Spanish ports. The consequence must be, that whilst we are laboring under all the embarrassments of extra duties in their ports, they are liberated from every embarrassment in ours. The effect is easy to be seen, the whole trade from the mouth of the Mississippi to the French and Spanish colonies, and probably to their European possessions, must ultimately be carried on in French and Spanish bottoms, to the entire exclusion of American ships. Nor will the injury stop here; both France and Spain will doubtless prefer, procuring their supplies from the U. States, in their own ships, and whilst they hold the monopoly of the trade to the mouth of the Mississippi, they will be able to draw from that point an abundant supply of flour and other articles of produce, to the great prejudice, if not to the ruin of the trade from the Atlantic ports to the French and Spanish colonies. How gentlemen under such circumstances can consider the interests of the eastern states uninjuried, is to me inexplicable.

Without detaining the committee longer upon this subject I will only observe, that it is my wish that every doubt touching the constitutionality of the treaty may be removed. I do not personally feel any peculiar hostility to it. The importance of the navigation of the Mississippi and a place of deposit at the mouth of it, has long convinced me of the necessity of adopting measures to place those objects beyond all future hazard. At the same time I must be permitted to say that I have not viewed the advantages, from possessing the country on the west of the river as some gentlemen appear to have considered them. This subject was much considered during the last session of congress: but it will not be found, either in the report of the secret committee, which has recently been published, or in any document, or debate, that any individual entertained the least wish to obtain the province of Louisiana; our views were then confined to New-Orleans and the Floridas, and in my judgment it would have been happy for this country, if they were still confined within those limits.---The vast and unmanageable extent which the accession of Louisiana will give to the United States---the consequent dispersion of our population, and the destruction of that balance which it is so important to maintain between the eastern and the western states, threatens, at no very distant day, the subversion of our union. For these reasons, and many others with which I will not detain the committee to detail, I have doubted the policy of the treaty itself, when taken altogether, but the only points on which I feel myself at liberty to decide, are those which have been before explained, respecting the constitutionality of the treaty, and until the doubts on these points are cleared up, I shall be compelled to vote against the resolution for carrying the treaty into execution.

(*To be continued.*)

Notice is hereby given,

THAT a petition will be presented to the general assembly of Maryland, at their next session, for a law or laws to incorporate companies for the purpose of improving the Frederick, Reister's-town and York roads, leading to the city of Baltimore.

August 12. 2aw