Congress of the United States.

HOUSE OF REPRESENTATIVES.

Tuesday, October 25.

DEBATE on the LOUISIANA TREATY.

[*Continued from yesterday's Gazette.*]

Mr. Nicholson apologised for rising at so late an hour, and begged the indulgence of the committe for a short time. He said he would endeavor to pursue the laudable example held out by the gentleman from Connecticut, who had just set down, (Mr. R. Griswold) by compressing his observations into as small acompass as possible. He should therefore necessarily be compelled to pass over the immense advantages which would be derived to the United States, from the acquisition of territory made by the treaty with France; nor indeed did he consider it a subject that required to be dwelt on in this house, as the attention of the public had been drawn to it for some months past, and he believed nothing new could now be added to the volumes which had been already written and circulated in the daily prints.

Gentlemen had noticed the report of a committee during the last session, of which he had the honor to be the chairman, and had endeavored to question the value of the acquired territory, because that report had only contemplated the acquisition of New-Orleans and the Floridas. It was certainly true that the committee in viewing this subject, had confined themselves to the immediate cause of complaint, and as the right of deposit had been suspended at New Orleans, their great object was to have this restored as speedily as possible, and to recommend such measures as would prevent a similar suspension at a future day. An enquiry of this kind naturally led to a view of the situation of the western country generally, and it was readily perceived that the same inconveniences which had occurred in relation to the mouth of the Mississippi, might at some future period, perhaps not very far distant, embarrass the commerce of the whole Mississippi territory, the western parts of Georgia, and the eastern parts of Tennessee. It was seen that the produce of this valuable country must be carried to sea, by means of the great rivers which rise in the Mississippi territory, but pass through East and West Florida before they reach the gulph of Mexico; and the committee were of opinion that these ought, if possible, to be secured by treaty. As one of the committee he was free to declare, that he did not at that time entertain the most distant idea, that the almost boundless tract of country lying west of the Mississippi, could be obtained by our government on any terms, much less for the comparatively inconsiderable sum which we had agreed to pay for it. Had he then offered an opinion on the subject, he should have had no hesitation to say, that the west bank of the Mississippi was almost incalculable in its value to the United States, if it was only for the purpose of preventing any foreign nation from colonizing it. If that country were thickly settled by a foreign nation, the whole river Missisipi from its source to the sea, must have been guarded by a strong chain of military posts; whereas the wilderness itself will now present an almost insurmountable barrier to any nation that may be inclined to disturb us in that quarter--- The opportunity of acquiring this country, together with the Island of New-Orleans, had presented itself to our executive and they had most wisely resolved to embrace it. The error which had been spoken of in the report, was in fact no error--- The committee intended to offer a geographical and not an historical view of the subject. Their object was to describe the country lying between our southern boundary and the gulph of Mexico, and they adopted such names as were used by modern geographers, without undertaking to settle a dispute as to the ancient boundaries of Louisiana— The gentleman from Virginia (Mr. Randolph) had very accurately detailed the various changes that territory had undergone, and had correctly stated, that it was divided into East and West Florida after the peace of 1763. while in possession of Great Britain - If we should be able to fix the eastern boundary of Louisiana at the river Perdido, there was no doubt that the value of our purchase would be considerably enhanced, as by that means we should certainly secure the whole of the Mobile bay, and the mouths of some other large rivers. Mr. N. said, however, he did not mean to go into a consideration of the numberless advantages derived to us by the acquisition of Louisiana, nor would he at that very late hour have trespassed on the time of the committee, but for the constitutional doubts which had been expressed by gentlemen on the other side of the house.

These constitutional difficulties, he said, appeared to him to be entirely separate and distinct, though gentlemen had very ingeniously blended them and had considered them as one. Whether the United States as a sovereign and independent empire had a right to acquire territory was one question, but whether they could admit that territory into the union, upon an equal footing with the other states was a question of a very different nature. Upon this latter point he meant to offer no opinion, because he did not consider it before the house; when the subject should come properly into discussion he should have no objection not only to enter at large into the constitutional authority to admit the newly acquired territory into the union as a state, but likewise to enquire whether this was really the spirit and intention of the third article of the treaty. The question now before the committee was, is it expedient to carry this treaty into effect? and to be sure, if gentlemen were of opinion that this government had no authority to acquire territory, the treaty ought to be rejected, because we should gain nothing by it.

But, sir, said Mr. N. had I been asked any where but in this house, whether a sovereign nation had a right to acquire new territory, I should have thought the question an absurd one. It appears to me too plain and undeniable to admit of demonstration. Is it necessary to resort to ancient authorities to establish a position which is proved by the conduct pursued by all nations from the earliest periods of the world, and which arises from the very nature of society? Can it be doubted that when a state is attacked, it has a right to assail its enemy in turn, and weaken the aggressor by dispossessing him of a part of his territory? Surely the opinions of all writers, both ancient and modern, and the examples of all nations in all ages can leave no room for doubt on this subject. But, sir, on this, as on most other occasions we are told that the constitution stares us in the face, and that this treaty cannot be carried into effect without violating the constitution. If indeed this sacred instrument forbids the acquisition of territory by the United States, I will most readily admit, that we ought to stop here.

Let the constitution, however, be examined, let the principles on which it was formed be taken into view, and it will be found that instead of forbidding, the constitution recognizes the authority to acquire territory. In the year 1776, when the United States absolved their allegiance to Great Britain, each state became a separate and independent sovereignty. As independent sovereignties they had full power in the language of the declaration of independence "to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states might of right do." Each state separately and for itself had all the attributes of sovereignty, and no man can be hardy enough to deny that at that time, any of the respective states had the capacity to extend its limits either by conquest or by purchase. These are the only two methods indeed by which territory may be acquired, and there have been very few wars in which the subjects of one nation or another have not been compelled to change masters. In the year 1781 the articles of confederation were finally agreed to, and each state surrendered a portion of its sovereignty for the common benefit of the whole. Much was reserved, but much was given up. The management of external concerns was given to congress, and congress alone had the power to levy war, conclude peace, and contract alliances. The capacity of the individual states to acquire new territory no longer remained to them. It was surrendered to the general government with the powers of war and peace. In the year 1788 the states again returned, as it were to their original independency. Their sovereignty was once more assumed. They deliberated about the means of a more permanent union, to secure to themselves and their posterity all the blessings of liberty. The present constitution was adopted, and even a larger portion of individual sovereignty was surrendered. The right to declare war was given to congress, the right to make treaties to the president and senate. Conquest and purchase alone are the means by which nations acquire territory. The one can only be effected by war, the other by treaty, and when the states divested themselves of these powers, and gave them to the general government, they gave at the same time that right to acquire territory which they themselves originally had. The right must exist somewhere. It is essential to independent sovereignty. The 10th section of the first article of the constitution expresly prohibits the states from entering into treaties, or levying war, and even from forming any compact or agreement with another state or a foreign power without the consent of congress. All the rights which the states originally enjoyed, are either reserved to the states, or are vested in the general government. If they once had the power individually to acquire territory, and this is now prohibited to them by the constitution, it follows of course that the power is vested in the United States

The gentleman from Connecticut (Mr. R. Griswold) admits that during the last session he was an advocate for very vigorous measures. By vigorous measures we mean war. Will he deny that it was his wish to seize upon New-Orleans by force? will he deny that this, and this alone, was the reason why his friends and himself did not unite with us in the measures then adopted for the purpose of acquiring this country? If the gentleman's object was war, if his object was conquest did he mean that we should drive all the inhabitants of the island into the gulph of Mexico, and afterwards retire into our own limits? did he wish that we should fight for the sake of conquest only, and not with a view to enjoyment? If he then thought that after conquering New-Orleans we should have a right to hold it, surely it will not now be denied that we can hold it, after having obtained it by peaceable measures.

The gentleman seems however partly to have abandoned this ground, but in his opinion the treaty itself violates the constitution. With that gentleman, I am unwilling to set the constitution at defiance. I trust we shall maintain it in all its vigor. The 3d article of the treaty, he says, either admits the ceded territory into the union immediately, or pledges us to do it hereafter. It cannot be contended that the territory is *ipso facto* admitted, but the objection is, that the president & senate have no right to pledge the government for any thing not immediately within their own powers. This objection is not solid. Every day's practice proves that it is without any force whatever. The president and the senate have the treaty-making power vested in them, but almost all their treaties contain stipulations, which must be performed by this house, if they are ever performed at all. In our last convention with Great-Britain, the president and senate pledged the United States to the payment of six hundred thousand pounds sterling, yet the payment of this money was not within the powers granted to them by the constitution, nor could it ever have been paid without the concurrence of this house. It was never doubted, however, that this stipulation was constitutional. The present treaty with France pledges the United States to the payment of fifteen millions of dollars, yet gentlemen do not question the constitutionality of this measure, although it never can be carried into effect without the co-operation of this house. In fact, there is no treaty made with a foreign power in which some of the regulations must not lie entirely inactive, unless this house shall give its assent to them. So in the present instance the fifteen millions of dollars can never be paid, nor the ceded territory admitted into the union, unless this house shall give its assent.

It is said, however, that congress cannot under the constitution admit foreign territory into the union upon an equal footing with the states, even under that article of the constitution which provides that new states may be admitted. I have before said that upon this point I mean to offer no opinion because at this time I think it unnecessary, nor need we now enquire whether this is in reality the meaning of the treaty. The gentleman from Connecticut, however, assuming this ground, contends that as the treaty embraces objects not in the power of the general government the whole is of course invalid. — There may be some possibility in this argument, but it is plausibility only. It has already been proved that the treaty making power frequently and of necessity embraces objects not in the power of the president & senate, but of the whole legislature, yet that this does not of course invalidate the treaty. It may be shewn that where a treaty contains stipulations, which are not in the power of the general government, and of course cannot be carried into effect, yet that this does not invalidate the whole, although these particular stipulations may of themselves be void. An instrument might sometimes contain convenants which were *impossible*, or that were *mala in se*; these of course would be void, but others might nevertheless stand good. I take a distinction which I am warranted in by the best writers, between articles of a treaty which are violated by one party, and articles which from the nature of things, or from previous engagements, are void.— Where one party violates an article in a treaty, the other has a right to declare the whole void, because the violation is a breach of faith, and is a voluntary act.— But where some of the stipulations of a treaty are impossible to be performed, or cannot be fulfilled consistently with the engagements of an antecedent treaty with a third power, these are of course void, but other parts will stand dood—A variety of cases might be cited to prove this, but a very strong one will be found in our treaty of peace with Great-Britain, concluded in 1783. The 4th article of that treaty provided that creditors on either side should meet with no lawful impediment to the recovery of debts *bona fide* contracted previous to the war. This was a stipulation which congress could not perform. In all matters relating to the recovery of debts, the individual states retained entire and uncontrouled authority. The objects embraced by this article were completely out of the power of congress. The right to make treaties had been committed by the articles of confederacy to the general government, but in this particular the assent of the states was absolutely necessary before that part of the treaty could be carried into effect. Great-Britain remonstrated repeatedly, but some of the states, particularly Virginia, refused to concur. Congress recommended it to the states, to declare the treaty the supreme law, but the recommendation was not attended to.— That article of the treaty was of course invalid, and never was fulfilled on the part of the United States. Yet it is certain that the whole treaty was not thereby rendered a nullity. Our independence was acknowledged. Hostilities ceased and the British armies were withdrawn. The cases are extremely analogous, and if it should finally be determined that congress cannot admit the ceded territory into the union as a state, yet the other parts of the treaty with France will stand good. If this was the intention of our ministers (which perhaps may be doubted) they seem to have guarded against the event of a refusal either by congress or by the people. For it is declared expresly that until the inhabitants can be incorporated into the union, and can be admitted to all the privileges of citizenship, they shall be protected in the enjoyment of their civil and religious rights.

The other constitutional objections, raised upon the 7th article of the treaty, which provides that the ships of France and Spain shall be admitted for twelve years into the ports of the ceded territory, without paying higher duties than the ships of the United States. To this gentlemen have opposed that part of the constitution which declares that no preference shall be given to the ports of one state over those of another, and that all duties, imposts and excises shall be uniform throughout the United States. There appears to be a strange inconsistency in the arguments of the gentleman from Connecticut. He tells you that this territory is not a state, and that it never can become a state; yet he afterwards declares that the treaty violates the constitution by giving the port of N. Orleans a preference over the ports of the Atlantic states. There is surely a contradiction here. Whatever may be the future destiny of Louisiana, it is certain that it is not now a state. It is a territory purchased by the United States in their confederate capacity, and may be disposed of by them at pleasure. It is in the nature of a colony whose commerce may be regulated without any reference to the constitution. Had it been the island of Cuba which was ceded to us, under a similar condition of admitting French and Spanish vessels for a limited time into the Havanna, could it possibly have been contended that this would be giving a preference to the ports of one state over those of another, or that the uniformity of duties, imposts and excises throughout the United States would have been destroyed? and because Louisiana lies adjacent to our own territory, is it to be viewed in a different light? Or can the circumstance of its being separated by a river only, instead of the sea, constitute any real difference in regard to the commercial regulations which we may think proper to establish? The restrictions in the constitution are to be strictly construed, and I doubt whether under a strict construction the very same indulgence might not be granted to the port of Natchez, which does not lie within any state, but in the territory of the United States It has never been deemed expedient to do so, and in all probability never will. Nor is it presumable that this regulation in relation to New-Orleans would have been made but for the importance of the great objects with which it was connected

Mr. N. believed that the gentleman from Connecticut need not entertain any apprehensions that the provisions contained in the 7th article of the treaty were intended to commence the repeal of the countervailing duties. It was true that some gentlemen had thought very favorably of the repeal at a former session, and he acknowledged himself to be of that number. But as it was a regulation more materially affecting the commercial part of the community, and as they had been opposed to it, the subject was dropped. He did not know that there was any intention to revive it, although possibly a majority of that house might be inclined to assent to it. Yet this could have no connection with the treaty, much less could it have any connection with the question immediately under consideration. We only have to determine whether we will carry this treaty into effect. Whether we will agree to appropriate the fifteen millions of dollars, and authorise the president to take possession---The latter has been agreed to, and surely we cannot consent to receive possession without paying the equivalent promised on our part.

Mr. N. closed his remarks by again begging pardon of the committee for the time he had occupied, and offered his acknowledgments for the indulgent attention he had received.

[*To be continued.*]

Latest Foreign Advices,

Via Philadelphia—continued.

LONDON, September 28.

Ministers are said to have obtained very important information respecting the meditated invasion, and that it will be attempted immediately, but against what particular point of the coast the consul intends to direct his first attack, must be left to the vigilance of our cruisers to ascertain. It is reported at Dover that Bonaparte will be at Ostend in the course of the present week, at the embarkation of a division of the army destined for this service; and the necessary measures of precaution have accordingly been adopted in every direction by us. Mr. Pitt, as colonel commandant of the Cinque Port Volunteers, is to meet the mayor of Dover this day upon the subject, and the troops have every where received orders to march at an hour's notice.

At the out-ports, a severe press for seamen has again taken place, and every movement of government shews that some strong measure, either of defence or offence, is about to be resorted to very speedily.

Prices of British stocks, Sept. 26.

3 per cent. C C—53 54
5 do. N. C.—87 87½
Omnium—8 7¾ dis.

Prices of American stocks at London, September 20.

3 per cents.—57 57½
8 do. 108
Old 6 per cents.—91 91¾
New 6 per cents.—91 91¾

Five and a half per cents. 93 with dividend from July 1.

Bank stock 122 to 123 per share, with dividend from July 1.

Semtember 30.

Major Mackenzie, who has been detained in France as a prisoner, along with the other English ever since the breaking out of the war, arrived in town on Wednesday last. He was one of the gentlemen sent to Fontainbleau, not on their parole of honor, but confined in the most irregular way, merely because they were subjects of his Britannic majesty. About a fortnight ago major Mackenzie set off for England by the way of Brussels, Antwerp and Holland. He had an opportunity of seeing the state of the preparations for a descent on England, in the different ports of Holland and Flanders. He says, that in every river, and upon every canal, they are actively employed in the building of boats. In the Seine, their chaloupes, cannoniers are vessels extremely slight in their form, about sixty feet long, nine feet broad, and about four feet deep in the hold. Those built in Holland are stronger and more sea-worthy. In the latter, the men would be completely protected against the musketry by the height of the sides; but they are very ill adapted to the smallest grape. There are a great number, indeed, on the stocks, but very few ready for sea. In the opinion of major Mackenzie, the French certainly cannot now hazard an attack upon England.

The damage sustained by the dreadful fire which lately happened at Bombay, is computed at six hundred and fifty thousand pounds; nearly five hundred horses were burnt to death. The houses destroyed will not again be erected where they formerly stood, which is a measure calculated to guard against a similar calamity.

ATTACK ON CALAIS.

It would appear, by comparing the different accounts which have reached us, that the attack on Calais ceased with the cause which gave rise to it. A number of gun-boats were known to be there preparing to sail, and accounts had been received by our cruisers that a much greater number, some say 150 gun boats, were about to leave Ostend. Of course it became an object of moment to prevent, if possible, any kind of co-operation, and an attempt was made to destroy those at the former place.

The attack commenced on Tuesday, as we have before informed our readers, but we have since learnt some important particulars, not yet stated. A cannonade was first made to the eastward, at Dunkirk it it is believed, to draw the attention of the enemy that way, and this manœuvre succeeded so effectually, that when our squadron bore in upon Calais, the cannonade and bombardment was so sudden and unexpected, that the enemy could not get their gun and flat-bottomed boats up the harbor, out of the reach of our fire. It was even a considerable time before they recovered so much from their surprize and confusion as to be able to fire a single shot; so that our vessels were able to do them a great deal of mischief. They afterwards opened a fire upon our squadron from every point of the shore, but we are happy to state, that on that occasion not a single individual was killed, or even wounded, on board our vessels.

The greater part of our shells were seen to fall among their gunboats, where they could not fail to a great deal of damage. None of them fell short of the boats, but some went over in the town, where they did much mischief, especially in the East quarter, which was set on fire in different places.

Whether the enemy had the temerity to imagine they could face our flotilla, or found themselves so much annoyed where they were, that they thought they would be as safe to endeavor to skirt along the shore to some other post under the protection of the numerous batteries which line the coast, and in consequence ventured to quit the harbor of Calais, we cannot take upon us to determine. We are, however, rather inclined to attribute their movement to the latter motive, which would also be strengthened by the consideration that, by quitting the harbor, they would draw away our fire from Calais, which was suffering severely by the bombardment, the town being in a blaze in different quarters. But whatever was the inducement, it is certain, that on Wednesday morning from 25 to 30 of the gun-boats were seen to come out of Calais harbor, as we yesterday stated.

They appeared at first to have an intention to proceed to the eastward, but soon after, probably in consequence of perceiving some of our vessels too much in shore to allow of their passing, without more risk than they were willing to encounter, they changed their course and proceeded along shore towards Boulogne. Our flotilla pursued them keeping up a brisk fire, and sailing as near shore as the depth of water would allow. The gun boats could be plainly seen from Dover, between our vessels and the shore. One of the frigates and a gun-brig were constantly enveloped in smoke. The whole of the French coast extending from the cliffs at the westward of Calais, to the entrance into Boulogne Bay, was one continued line of smoke, and the wind being to the eastward, almost every gun was heard on the opposite English coast. Some of the enemy's boats were driven on shore, but the greater part it is believed, made their way into the bay of Boulogne, whither our fleet was seen to be chasing them about half past two o'clock on Wednesday, still keeping up such a tremendous fire, that they must have suffered very severely.

It would appear, however, by the accounts that have reached us this morning, that they are likely to experience as little *civility* from our squadron in their present quarters as in those they last quitted; for with the dawn of day, a fresh cannonade and bombardment commenced again yesterday, and continued till between three and four o'clock, when it became most tremendously heavy. The French coast being covered with a heavy fog our squadron could not be seen from the coast about Dover, but from the sound, its direction plainly appeared to come from Boulogne, whither our brave tars had chased the enemy the preceding day. Next post we expect will bring us some interesting particulars respecting the attack. In the mean time we subjoin the following.

Admiralty-office, Oct. 1.

Copy of a letter from rear-admiral Montagu to Sir Even Nepean, bart. dated on board, H. M. S. Utrecht Downs, Sept. 28.

Sir,

Enclosed I have the honor to transmit a duplicate of intelligence received from captain Jackson, of the Autumn, the original being transmitted to the commander in chief.

I am, &c. MONTAGU.