Congreſs of the United States.

HOUSE OF REPRESENTATIVES.

Tueſday, October 25.

DEBATE on the LOUISIANA TREATY.

[*Continued from yeſterday's Gazette.*]

Dr. Mitchell roſe and ſaid, he intreated the indulgence of the committee, for riſing at ſo late a ſtage of the debate, when ſeven hours have already been employed in the ſitting of the day. And the reaſon of his requeſt was, that ſuch extraordinary doctrines have been advanced againſt carrying into effect the treaty with France which cedes Louiſiana to our nation, and ſuch repeated alluſions have been made to the ſentiments which he ſubmitted to the houſe during the debate of yeſterday, that he felt himſelf called upon to attempt a reply, and therein to ſhew that the grounds taken by the gentlemen of the oppoſition are neither ſtrong nor tenable. Although the ſubject is ample and copious, he ſhould endeavor to condenſe his remarks to ſo moderate a compaſs, as not to treſpaſs long upon the patience of the committee.

My colleague, ſaid Mr. M. who opened the debate this morning (Mr. G. Griſwold) diſplayed in his ſpeech the objections raiſed againſt the reſolution on the table, ſo fully, that he almoſt exhauſted the ſubject. For in liſtening attentively to the reaſoning of the gentleman from Virginia, who followed him (Mr. J. Lewis) and of the other gentleman from Virginia who ſpoke next (Mr. Griffin) he could not diſcern that any new or additional matter of much conſequence had been urged. Nor did he diſcover much more than a repetition in ſubſtance of his colleague's reaſoning, in what had been urged by the gentleman from Maſſachuſetts (Mr Thatcher,) and the gentleman from Connecticut (Mr. R. Griſwold); though the ſtatement of their objections had received a form and coloring diſverſified according to the ſkill and ingenuity of each.

In the reply which he ſhould make to the gentlemen in oppoſition to the appropriations for carrying the treaty into operation, he ſhould not examine their arguments ſeverally as they had been brought forward in the courſe of the debate That mode would neceſſarily lead him into tedious and needleſs repetition; he ſhould therefore endeavor to reduce all the arguments he had heard from the other ſide of the houſe into their elementary propoſitions, and having done ſo, to ſhew that they were weak in their nature and wrong in their direction. And even this view of the queſtion would be much circumſcribed, on account of the ſtrong and maſterly manner in which a part of the objections had been already repelled by his eloquent friend from Virginia (Mr. J. Randolph) and by the impreſſive remarks of his other friend from Delaware (Mr. Rodney.)

The gentlemen, Mr. Chairman, who reſiſt the proviſions neceſſary to the completion of this treaty, do ſo becauſe they ſay it has been ratified by the preſident and ſenate in open violation of the conſtitution of the United States, and is therefore no treaty, but a nullity, an inſtrument void *abinitio*, not a part of the ſupreme law of the land, and conſequentld not binding upon congreſs or the nation. They draw this bold and extraordinary concluſion from the ſtyle and meaning of the 3d and 7th articles of the treaty. The former of theſe, they ſay, is unconſtitutional, becauſe it propoſes to annex a new territory, with its inhabitants, to our preſent dominion; and the latter, becauſe it aboliſhes for a term of years the diſcriminating duties of tonnage and impoſt within the ceded territory, giving a preference there to France and Spain, and leaving thoſe duties unaltered in all the ports of the union.

By the 3d article, it is agreed that the inhabitants of the ceded territory ſhall be incorporated into the union of the United States as ſoon as poſſible, according to the principles of the federal conſtitution, and be admitted 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.

On expounding this article, my colleague has declared that the preſident and ſenate have no power to acquire new territory by treaty, and he argues that our people are to be forever confined to their preſent limits. This is an aſſertion directly contrary to the powers inherent in independent nations, and contradictory to the frequent and allowed exerciſe of that power in our own nation. We are conſtantly in the practice of receiving territory, by ceſſion, from the Red Men of the Weſt, the aborigines of our country. The very treaty mentioned in the preſident's meſſage with the Kaſkaſkias Indians, whereby we have acquired a large extent of land, would, according to this doctrine, be unconſtitutional; and ſo would all the treaties which add to the ſize of our ſtatute book, with the numerous tribes of the natives on our frontiers. According to this conſtruction, all our negociations ſo happily concluded with thoſe people, whom we ever have uniformly acknowledged as the ſovereigns of the ſoil, are nugatory, and to be holden for nought. He ſaid, he was perfectly aware of the anſwer which would be made, that we held all our national domain under Great-Britain by virtue of the treaty concluded at Paris in 1783. What, after all, was the amount of that ceſſion by England? Certainly not a conveyance of a country which never was theirs, but rightfully belonged to the Indian natives; for it was in its true conſtruction, merely a *quit claim* of the pretenſions or title to the land which the Engliſh had obtained by conqueſt and treaty from the French. By that negociation, the United States obtained a bare *relinquiſhment* of the claims and poſſeſſions of thoſe two powerful nations. But the paramount title of the original inhabitants was not affected by this. However contemptuouſly the rights of theſe rude and feeble tribes had been regarded by the Europeans, their deſcendants in theſe ſtates had conſidered them with recognition and reſpect. Until the Indians ſold their lands for an equivalent, the humane and juſt principles of the American government acknowledged them to be the only legitimate owners. And the ſovereignty acquired by treaty or purchaſe to our government was derived from the title which the natives transferred to them as grantees in a fair bargain and ſale. Such, Mr. M. argued, were the rules of true conſtruction, and theſe rules admitted and acted upon by the federal government; and yet, according to the novel doctrine of this day, every treaty with the natives for parcels of their country, although hitherto deemed lawful, would be an unconſtitutional act. According to this notion, every treaty for lands, holden with the aborigines ſince the organization of the government, was a violation of the conſtitution And thus this invaluable inſtrument, this bulwark of our liberties, had been violated perhaps twenty times or more, ſince we began to buy the ſuplusage of their hunting grounds. The Indian tribes are as much aliens as any other foreign nations. Their lands are as much foreign dominion as the ſoil of France or Spain. Yet we have gone on to annex the territories which they ſold us, to our preſent territory, from the time we acquired independence, and no mortal, until this debate aroſe, Mr. Chairman, has ſo much as thought that thereby a breach of the conſtitution was made. My colleague is ſurely entitled to great credit for his perſpicuity in finding out that all our great and wiſe predeceſſors in adminiſtering this government have been blunderers and conſtitution breakers. But, ſir, the juſt judgment on this ſubject is, that the preſidents and ſenates of the United States have heretofore acted conſtitutionally in acquiring by purchaſe foreign dominion from the alien Indians. And by parity of reaſoning, they have acted not only conſtitutionally, but eminently for the intereſt of the country, in buying Louiſiana from the whitemen, its preſent ſovereigns.

But independent of correct principle and ſteady precedent in favor of the acquirement of new territory, it may be worth the while to mention a few of the ſtrange conſequences which flow from the doctrine which the gentlemen of the other ſide of the houſe contend for. According to their reaſoning, if by any force of the currents of the ocean, or any conflicts of the winds and the waves, a new ſurface of earth ſhould emerge from the neighborhood of Cape Hatteras, it would be unconſtitutional to take poſſeſſion of it. Yet it appears to me, ſir, very like an abſurdity to ſay, the United States would break their bond of union by erecting a light-houſe on it. Suppoſe that by volcanic action, iſlands ſhould be ſuddenly elevated from the bottom of the neighboring Atlantic, as they have repeatedly riſen from the depths of the Mediterranean, would it be unconſtitutional to take poſſeſſion of them? So far from it, there would on the other hand, be a duty in the government to aſſume the dominion of all adjacent iſlands. Again—ſuppoſe for a moment that our preſent limits were *full* of people, would it be unconſtitutional to purchaſe additional territory for them to ſettle upon? Muſt the hive always contain its preſent numbers, and no ſwarm ever go forth? At this rate we ſhould, before a great lapſe of time, arrive at a *plenum* of inhabitants, and if no new ſettlement could be obtained for them, the Chineſe cuſtom of infanticide muſt be tolerated to get rid of thoſe tender little beings for whom food enough could not be procured, to rear them to manhood. And thus, when this *maximum* of population ſhall have arrived, there would be no conſtitutional power to purchaſe and poſſeſs any of the waſte lands on this or the other ſide of the Miſſiſippi, for them to ſpread and thrive upon. A doctrine againſt which, he confeſſed that his underſtanding revolted.

Our government having in this manner the right of acquiring additional territory, had very often exerciſed that right by actual purchaſes, and by poſſeſſions and ſettlements afterwards. The whole of the recent ſtate of Ohio and of the Indiana territory, was obtained and peopled in this manner. And in the ſettlement of limits both on the ſide of Florida and Nova-Scotia, the principle had again and again been acted upon; and, ſtrange to tell, nobody, until this eventful time, had poſſeſſed acuteneſs enough to find out the error.

But the gentleman from Connecticut, Mr. Chairman, (Mr. R. Griſwold) contends that even if we had a right to purchaſe ſoil, we have no buſineſs with the *inhabitants*. His words however are very ſelect; for he ſaid and often repeated it, that the treaty-making power did not extend to the admiſſion of foreign nations into this confederacy. To this it may be replied that the preſident and ſenate have not attempted to admit *foreign nations* into our confederacy. They have bought a tract of land, out of their regard to the good of our people, and their welfare. And this land congreſs are called upon to pay for. Unfortunately for the bargain, this region contains civiliſed and chriſtian inhabitants; and their exiſtence there, it is alledged, nullifies the treaty. The gentleman conſtrues the conſtitution of the United States very differently from the manner in which Mr. M. himſelf did. By the 3d ſection of the 3d article of that inſtrument it is declared, that congreſs ſhall have power to diſpoſe of and make all needful rules and regulations reſpecting the territory and other property of the United States, and nothing therein contained ſhall be conſtrued ſo as to prejudice any claims of the United States or of any particular ſtate.

In the caſe of Louiſiana no injury is done either to the nation or to any ſtate belonging to that great body politic.—There was nothing compulſory upon the inhabitants of Louiſiana, to make them ſtay and ſubmit to our government.—But if they choſe to remain, it had been moſt kindly and wiſely provided, that until they ſhould be admitted to the rights, advantages and immunities of citizens of the United States, they ſhall be maintained and protected in the enjoyment of their liberty, property and the religion which they profeſs. What would the gentleman propoſe that we ſhall do with them? Send them away to the Spaniſh provinces, or turn them looſe in the wilderneſs? No, ſir, it is our purpoſe to purſue a much more dignified ſyſtem of meaſures. It is intended, *firſt* to extend to this newly acquired people, the bleſſings of law, and ſocial order. To protect them from rapacity, violence and anarchy. To make them ſecure in their lives, limbs, property, reputation and civil privileges. To make them ſafe in the rights of conſcience. In this way they are to be trained up in a knowledge of our own laws and inſtitutions. They are thus to ſerve an apprenticeſhip to liberty; they are to be taught the leſſons of freedom; and by degrees they are to be raiſed to the enjoyment and practice of independence. All this is to be done as ſoon as poſſible; that is, as ſoon as the nature of the caſe will permit; and according to the *principles of the federal conſtitution*. Strange! that proceedings declared on the face of them to be conſtitutional, ſhould be inveighed againſt as violations of the conſtitution! Secondly, after they ſhall have been a ſufficient length of time in this probationary condition, they ſhall as ſoon as the principles of the conſtitution permit, and conformably thereto, be declared citizens of the United States, congreſs will judge of the time, manner and expediency of this. The act we are now about to perform will not confer on them this elevated character. They will thereby gain no admiſſion into this houſe, nor into the other houſe of congreſs. There will be no alien influence thereby introduced into our councils. By degrees, however, they will paſs on from the childhood of republicaniſm, through the improving period of youth, and arrive at the mature experience of manhood. And then, they may be admitted to the full privileges which their merit and ſtation will entitle them to. At that time a general law of naturalization may be paſſed. For I do not venture to affirm that by the mere act of ceſſion, the inhabitants of a ceded country become of courſe citizens of the country to which they are annexed. It ſeems not to be the caſe unleſs ſpecially provoided for. By the 3d article it is ſtipulated, that the inhabitants of Louiſiana ſhall *hereafter* be made citizens; *ergo* they are not made citizens of the U. States by mere operation of treaty. In confirmation of this conſtruction, I will mention the 2d article of the treaty of amity, commerce and navigation, between the United States and his Britannic majeſty, concluded in 1794. It is therein ſtipulated that all Britiſh ſubjects who ſhall continue within the evacuated poſts and precincts, ſhould be conſidered, if they remained there longer than one year, to have abandoned all allegiance to the crown of Britain, and to have made their election to become citizens of the United States: after which, by taking the oath of allegiance, they become inſtantly, by act of treaty, and by force of ſtatute, citizens of the United States. I therefore conſider the point already adjudged, when the treaty of 1794 was decided on, that without an act of congreſs, aliens can be converted into citizens by the proviſions of a treaty duly ratified by the preſident and ſenate. In the treaty reſpecting Louiſiana, there is happily no cauſe for alarm. This power of making citizens has not been exerciſed by the preſident and ſenate; but at a future day may be uſed by congreſs.

But I proceed to the ſecond objection to the treaty. This is derived from an alledged unconſtitutionality in the 7th article. By this, it is agreed that French ſhips coming directly from France, or any of her colonies, loaded only with the produce or manufactures of France or her ſaid colonies ſhall be admitted for twelve years into New-Orleans and other legal ports of entry in Louiſian, without being ſubject to any greater duty on merchandize or tonnage than is paid by our own citizens. The like covenant exiſts with regard to the ſhips, ports and colonies of Spain. This they ſay, is a violation of a declaration contained in the 9th ſection of the firſt article of the conſtitution, which declares that no preference ſhall be given by any regulation of commerce or revenue to the ports of one ſtate over thoſe of another.

In my view of this ſubject, Mr. Chairman, this prohibitory clauſe of the conſtitution is meant as a check to the legiſlative power of congreſs only—and by no means as a reſtraint upon the treaty making power of the preſident and ſenate. The conſtitution leaves this very broad and with great wiſdom; it being improper and impoſſible to limit the negociations which it might be expedient for this government to make with other goveanments. From the ſilence of the conſtitution on the matter and extent of treaties, it has been argued with great appearance of truth and fairneſs, that there is no conſtitutional boundary to the treaty-making authority. Hence, according to this mode of reaſoning, the treaty-making privilege, being ſo vaſt and unlimited, is unfettered by conſtitutional impediments, and like that great charter of freedom itſelf, originates from its own ſource, ſupreme laws of the land. A treaty therefore can ſcarcely be conceived to be unconſtitutional, except in the caſe of outraging all common principles, rights and feelings. On this ground, the commercial regulations of the 7th article are ſecured againſt all charges of unconſtitutionality.

But, even if the treaty-making power was not ſo extenſive and mighty, there would be no violation of any of its directions by granting the favors to Spain and France which the treaty ſtipulates. For the preference forbidden by the conſtitution applies to ſtates in the union and equal members thereof. The domain we are about to acquire is not a ſtate, for that is a ſovereign and independent republic. Nor is it a province; this being an inhabited country ſubdued by force of arms. Nor is it a colony, which is a ſprout or ſcion, as it were of the parent trunk. In its relation to us, it is a territory, a word ſignifying a peculiar and mingled idea of a country and inhabitants in *the inchoate or initial* condition of a republic. By the treaty therefore there is no preference given to one ſtate over another, in any commercial regulations. The port of New-Orleans is not a part of any ſtate in the union. The abolition of the diſcriminating duties in favor of the two European nations is confined abſolutely to the ports of Louiſiana. They have no preference in the ports of any of the ſtates. Nor is there given to one any advantage over the other. In right conſtruction, theſe indulgencies are, in fact, a part of the purchaſe money; and on account of this valuable conſideration, congreſs will have leſs money to appropriate and the nation thereby be ſaved from ſeveral milljons of additional debt. Our conſtituents have certainly great reaſon to rejoice at this. I therefore conclude that the apprehenſion and alarm expreſſed by the two gentlemen from Virginia (Mr. J. Lewis and Mr. Griffin) were wholly unfounded. There is no breach of the conſtitution.

Notwithſtanding all this, one gentleman ſays, the adoption of the 7th article will give "a death wound to the northern commerce of the United States:" and another declares, "that under it, France and Spain will gain a monopoly of the commerce and navigation of Louiſiana, & the adjacent country." Mr. M. ſaid he could not conceive how this ſhould happen. Ever ſince the ratification of the treaty of *St. Lorenzo el Real*, there had a great reſort of American veſſels to the Miſſiſippi. From New-York in particular there had been large and frequent commercial intercourſe, almoſt ever ſince that time. This had been rapidly increaſing, and promiſed to be more and more important—and all this under a foreign juriſdiction, and while Louiſiana belonged to Spain. Now that province was about to be changed into a territy of the United States.—What an augmentation of tonnage and navigation might we not expect, when our own Miſſiſippi ſhould be whitened with our canvas? How eagerly would the eaſtern and middle ſtates engage in a carrying trade, now rendered eaſy and free from impediment. It appeared to him that the tranſportation of the vaſt and valuable productions of both banks of that river, would increaſe the demand for veſſels. Greater capital will be called for to carry on the Louiſiana commerce, and greater profits would reſult. Ship building and all the attendant arts would be promoted. The number of ſeamen would be augmented—who trained up to maritime diſciplined in merchant veſſels, might on any appearance of danger be transferred to the navy, and ſerve as the bulwark and ſafe-guard of the nation. Valuing moſt highly as he did, the commercial proſperity of the U. States, he conſidered that a new ſpring would be given to all its enterprize, by the acquiſition of Louiſiana. Our ſkill in commerce and diſpatch in navigation would overmatch and bear down all the competition of the French and Spaniards. A more cordial union would be promoted between the weſtern and eaſtern ſtates; who would then be connected by the ſtrong ties of commerce and intereſt, as well as of law and policy; and the jealouſies, by which attempts had been made to divide them, and which had been raiſed to a mountainous magnitude, would be entirely levelled and done away. He was confident that all the Atlantic ſeaports; and beyond all, the great commercial city which he repreſented, would participate largely of the benefits flowing from our complete ſovereignty of the Miſſiſippi and all its waters.

Mr. M. then applauded the mild and dignified conduct of an adminiſtration, which had accompliſhed theſe great events by peaceful means, rather than war; and concluded, that if in the courſe of his obſervations he had not been ſucceſsful in convincing the underſtandings of the gentlemen who thought differently from him, he had at leaſt expreſſed ſome of the reaſons which governed his judgment and would guide his vote on the propoſition then depending. He hoped the reſolution would be agreed to, for making immediate preparatory proviſion to take poſſeſſion of Louiſiana, according to the ſtipulations of the treaty.

Mr. J. Randolph ſaid, that a ſenſe of duty alone could have induced him to riſe at that late hour. He wiſhed to call the attention of the committee to a ſtipulation in the treaty of London. Here Mr. R. read an extract from the 3d article of that treaty, whereby the United States are pledged not to impoſe on imports in Britiſh veſſels from their territories in America, adjacent to the United States, any higher duties than would be paid upon ſuch imports if brought into our Atlantice ports in American bottoms. In this caſe, he ſaid, gentlemen could not avail themſelves of the diſtinction taken by his friend from Maryland (Mr. Nicholſon) between a territory and a ſtate, even if they were ſo diſpoſed,—ſince the ports in queſtion were *ports of a ſtate*. The ports of New-York, on the lakes, were as much ports of that ſtate, as the city of New-York itſelf—They had their cuſtom-houſe officers, were governed by the ſame regulations, as other ports; duties were exacted at them, and yet under the article of the Britiſh treaty which had been juſt read, Britiſh bottoms could and did enter them ſubject to no higher duties than were paid by American bottoms in the Atlantic ports. Mr. R. ſaid that he did not mean to affirm that this exemption made by the treaty of London was conſtitutional, ſo long as a diſtinction prevailed between American and Britiſh bottoms in other ports. He had never given a vote to carry that treaty into effect—but he hoped the gentleman from Connecticut, both of whom, at leaſt, he knew had been a conſpicuous advocate of that treaty; he hoped that gentleman, (Mr. Griſwold) would inform the committee how he got over the conſtitutional objection to this article of the treaty of London, which he had endeavored to urge againſt that under diſcuſſion. How could the gentleman, with the opinion which he now holds, agree to admit Britiſh bottoms into certain ports, on the ſame terms on which American bottoms were admitted into American ports, generally? Thereby making that very difference, giving that very preference to theſe particular ports of certain ſtates, which he tells us cannot conſtitutionally be given to the port of New-Orleans; although that port is not within any ſtate, and if his (Mr. Griſwold's) doctrine be correct, not even within the United States.

The gentleman from Connecticut profeſſed a wiſh that this important diſcuſſion ſhould be conducted with moderation and candor. In this ſentiment he concurred—he was therefore altogether unprepared, after this preamble, to hear the gentleman from Connecticut repreſent the treaty in queſtion as conceding the moſt valuable commercial privileges to France and Spain, and thereby ſapping the very foundation of our carrying trade. In the ſpirit of candor the ſtipulations in queſtion would be viewed, not as conceding advantages in trade to thoſe nations, but as ſecuring them to ourſelves. The article in queſtion did indeed profeſs to grant, for limited time, to French and Spaniſh veſſels, laden with the products of their reſpective countries, admiſſion into the ports of the ceded territory, on equal terms with our own ſhips. But although, nominally an advantage has been conceded to theſe nations, ſubſtantially their ſituation was changed for the worſe, and the benefit in fact conferred on us.—For what were our rights in theſe ports, and what were theirs, ſetting aſide the treaty? The treaty then had rendered our ſituation more eligible and theirs leſs ſo.—How then could gentlemen declare that it was calculated to injure our carrying trade? When by it our trade was put on the footing of abſolute ſecurity—whilſt that of France and Spain was admitted under conſiderable reſtrictions, enjoying in but one particular and for twelve years only an equality with ours. Their trade, before on ſo ſuperior a footing, had deſcended from its pre-eminence in privilege, and given way to ours. And yet gentlemen warn us of the deſtruction of our carrying trade, and commercial proſperity, from the very ſource which has enlarged and ſecured both. The enemies of the treaty, therefore, are the advocates of the trade of France and Spain, and the enemies, ſo far, of our own. Since by retaining things in their preſent poſture, they would continue to thoſe nations the ſuperior advantages which they now enjoy in the ports of Louiſiana, they would continue the reſtrictions which heretofore have fettered our commerce to that country, and they would refuſe to put our trade on a footing ſuperior to that of France and Spain.

But whilſt gentlemen endeavor to alarm us with the idea of this formidable competition, I cannot, ſir, (ſaid Mr. R.) feel a moment's apprehenſion from this quarter. Excluſive of the limitation of twelve years, and the reſtriction that their cargoes ſhall be of French or Spaniſh growth or manufacture, who, that conſidered the preſent condition and future proſpects of thoſe countries could regard them as formidable commercial competitors? Was there not infinitely greater probability that the 3d article of the treaty of London, which had no limitation as to time, and embraced our whole frontier on the ſide of Canada, would enable Great-Britain to ſupply that frontier on terms as cheap, or cheaper, than we ourſelves could?

With more candor, however, the gentleman has boldly avowed that he was among the number of thoſe who, at the laſt ſeſſion of congreſs, were for purſuing "vigorous meaſures," for enforcing our rights in relation to the Miſſiſippi. What thoſe vigorous meaſures were the houſe would be at no loſs to determine. The gentleman had diſdained to deny his principles—he would not now ſhrink from what he had then advocated, and Mr. R. ſaid he applauded him for it.

Mr. Randolph ſaid the gentleman had laid his premiſes a great way off, as if from the expectation that they would not be cloſely examined, and that, therefore, there would be nothing to oppoſe to the concluſions which he had drawn from them. He had ſtated a caſe ſcarcely ſuppoſeable, and from it inferred the very principle in queſtion. His whole argument was founded on preſuming the very principle to be