DEBATE IN THE SENATE ON THE LOUISIANA TREATY.

THURSDAY, November 3.

[*Continued from yesterday's Gazette.*]

Mr. Dayton—As the honorable gentleman from Maſſachuſetts has quoted what was ſuggeſted by me in a former debate, t deduce from it an inference which the information I gave can by no means warrant, I muſt be allowed the liberty of correcting him. When I ſaid that there exiſted an eſſential difference between the French and Spaniſh officers at New-Orleans, as to the real boundaries of the province of Louiſiana, I did not mean to inſinuate that this diſagreement extended ſo far as an oppoſition to the French taking poſſeſſion. It was a queſtion of limits only, varying however ſo much in extent, as would have produced a ſerious altercation between thoſe two countries, although cloſely allied.

The Spaniſh governor had taken it upon himſelf to proclaim that the province lately ceded and about to be given over to France, would be confined on the eaſt of the Miſſiſippi to the river Iberville, and the lakes Maurepas and Pontchartrain, or in other words, to the iſland of New-Orleans; but the French prefect on the contrary declared that he neither had nor would give his aſſent to the eſtabliſhment of thoſe limits, which would be regarded no longer than until the arrival of their troops.

The ſame gentleman (Mr. Pickering,) has ſaid that the advocates of this meaſure ſeem to rely much more upon their power than upon their right, and in this aſſertion I am compelled to ſay he has done us very great injuſtice. The title of the French is founded upon the often quoted treaty of St. Ildefonſo, confirmed by the royal order ſigned by the king of Spain himſelf, ſo late as the 15th October, 1802, directing the delivery of the "colony of Louiſiana and its dependencies, as well as of the city and iſland of New-Orleans, without any exception, to general Victor, or other officer duly authoriſed by that republic to take charge of the ſaid delivery".

When at New-Orleans in July laſt, I obtained from the beſt ſource, a tranſlated copy of that royal order, and can aver that it abſolutely directs poſſeſſion to be given without reſervation or condition. It is not, and cannot be denied, that the lately ratified treaty of Paris transfers to us completely all the title acquired by France in virtue of the firſt treaty and order alluded to. We have then moſt inconteſtibly the right of poſſeſſion, and our object now is by paſſing the bill before us to obtain the poſſeſſion itſelf, which we can certainly never effect, conſiſtently with good faith, if the reaſonings and objections of my honorable friends from Delaware and Maſſachuſetts ſhould prevail. We are aſked by the ſame gentlemen what will be the conſequence if it ſhall appear that the royal order has been revoked? I anſwer firſt that it is not in the leaſt degree probable, for neither of them pretend to have heard of ſuch revocation, nor is it intimated in the confidential communications before the ſenate. But admitting for argument's ſake that it were revoked, of what avail could it be againſt a third party who had in the mean time become a *bona fide* purchaſer. Shall one nation give to another a written, formal evidence of transfer of territory, and revoke it at pleaſure, eſpecially after a third ſhall have been tempted and induced by that very evidence of title to contract for the purchaſe of it. Would an act ſo fraudulent be countenanced between individuals in a court of equity? Could it be juſtified between nations in a high court of honor? The honorable gentleman from Delaware has taken a more delicate ground of objection. He has inſinuated that there exiſts in the knowledge of the ſenate, the evidence of a ſerious oppoſition to our poſſeſſing that country, which if known to the other branch of the legiſlature would probably have defeated this bill in its progreſs there. Alluſions artfully made in this manner to documents communicated under the injunction of ſecrecy, place us in an embarraſſing ſituation. Forbidden by our rules to expoſe the papers referred to, even in argument, we can only declare what impreſſions they have made upon ourſelves. Every ſenator muſt underſtand him, every one muſt have heard and read and weighed deliberately the contents of thoſe documents, and for myſelf I am free to avow my belief that if known to every member of the other houſe, they would have had no effect againſt this bill, but would rather have quickened and enſured its progreſs, for ſuch is the influence they have upon me.

The ſame gentleman goes on to ſay that our own government undoubtedly expects to meet with oppoſition, and to be compelled to uſe violence, inſtead of receiving peaceable poſſeſſion, or why ſhould it ſend there ſo impoſing a force. From what ſource that honorable gentleman has acquired a knowledge of the number of troops ordered down the river, he does not tell us, nor indeed how many he means when he calls the force an impoſing one. If in times of peace and profound tranquility the Spaniards have found it prudent to keep there conſtantly, at leaſt four or five hundred troops, could we be juſtified in ſending no greater number when ſo important an act is about to be performed as the tranſfer of an extenſive territory with the poſts connected with it, and this too before we can have had an opportunity of ſounding the diſpoſitions of the inhabitants and of the Indians in the vicinity, in order to judge what effect the change will have upon them. Theſe are wiſe precautions which our government, I preſume, would take, even if they could be moſt certain that the delivery would be voluntary and peaceable on the part of Spain, and therefore afford no color for the preſumption that they expect or intend to uſe violence. The bill before us is drawn up in terms which are at the ſame time conſiſtent with our late treaty, and perfectly calculated to ſecure our intereſts, for it does not authoriſe the payment of the ſtocks until after complete poſſeſſion of the territory. Timely arrangements, which a law only can warrant, ought to be made for preparing the forms of certificates and for creating the ſtock, that every thing depending on us may be ready; and where can the diſcretionary power of transferring it in payment be ſo well veſted, as with the preſident, who will certainly be the firſt to know when we have received the valuable conſideration for it, viz. actual poſſeſſion. When this event happens, congreſs, who the honorable gentleman thinks, ſhould be the only judge and ſole depoſitary of this power, may poſſibly not be in ſeſſion, and in this caſe upon his plan, our plighted fait would be violated, our acquiſition of the country jeopardized, and our right to it loſt. If we thus reaſonably take all the preliminary ſteps for complying with our ſtipulations, and obſtacles ſhould nevertheleſs exiſt to the attainment of this object, it will be ſeen and known that they are not of our creation, but that we ſtand ready to fulfil all the engagements on our part, as I truſt we ſhall be to compel it, if there be need on the part of others.

Mr. Taylor. There have been, Mr. preſident, two objections made againſt the treaty; one that the United States cannot conſtitutionally acquire territory; the other, that the treaty ſtipulates for the admiſſion of a new ſtate into the union; a ſtipulation, which the treaty making power is unable to comply with. To theſe objections I ſhall endeavor to give anſwers not heretofore urged.

Before a confederation, each ſtate in the union poſſeſſed a right, as attached to ſovereignty, of acquiring territory, by war, purchaſe or treaty. This right muſt be either ſtill poſſeſſed, or forbidden both to each ſtate and to the general government, or tranſferred to the general government. It is not poſſeſſed by the ſtates ſeparately, becauſe war and compacts with foreign powers and with each other, are prohibited to a ſeparate ſtate; and no other means of acquiring territory exiſt. By depriving every ſtate of the means of exerciſing the right of acquiring territory, the conſtitution has deprived each ſeparate ſtate, of the right itſelf. Neither the means nor the right of acquiring territory are forbidden to the United States; on the contrary, in the fourth article of the conſtitution, congreſs are empowered "to diſpoſe of and regulate the territory belonging to the United States." This recognizes the right of the United States to hold territory. The means of acquiring territory conſiſt of war and compact; both are expreſsly ſurrendered to congreſs and forbidden to the ſeveral ſtates; and no right in a ſeparate ſtate to hold territory without its limits, is recognized by the conſtitution, nor any mode of effecting it poſſible, conſiſtent with it. The means of acquiring and the right of holding territory, being both given to the United States, and prohibited to each ſtate, it follows that theſe attributes of ſovereignty, once held by each ſtate, are thus tranſferred to the United States; and that if the means of acquiring and the right of holding, are equivalent to the right of acquiring territory, then this right merged from the ſeparate ſtates to the United States, as indiſpenſibly annexed to the treaty-making power, and the power of making war; or indeed is literally given to the general government by the conſtitution.

Having proved, ſir, that the United States may conſtitutionally acquire, hold, diſpoſe of and regulate territory, the other objection to be conſidered is, whether the third article of the treaty does ſtipulate that Louiſiana ſhall be erected into a ſtate. It is conceded that the treaty making power, cannot by treaty erect a new ſtate, however they may ſtipulate for it. I premiſe, that in the conſtruction of this article, it is proper to recollect, that the negociators muſt be ſuppoſed to have underſtood our conſtitution; it became very particularly their duty to do ſo, becauſe in this article itſelf, they have recited "the principles of the conſtitution" as their guide; hence it is obvious, that they did not intend to infringe, but to adhere to thoſe principles; and therefore if the article will admit of a conſtruction, conſiſtent with this preſumable knowledge and intention of the negociators, the probability of its accuracy will be greater, than one formed in a ſuppoſition, that the negociators were either ignorant of that, which they ought to have known; or that they fraudulently profeſſed a purpoſe, which they really intended to defeat. The following conſtruction is reconcileable with what the negociators ought to have known, and with what they profeſſed to intend.

Recollect, ſir, that it has been proved, that the United States may acquire territory. Territory ſo acquired, becomes from the acquiſition itſelf a portion of the territories of the United States, or may be united with their territories, without being erected into a ſtate. An union of territory is one thing; of ſtates another. Both are exemplified by an actual exiſtence. The United States poſſeſs territory, compriſed in the union of territory, and not in the union of ſtates. Congreſs are empowered to regulate or diſpoſe of territorial ſections of the union, and have exerciſed the power; but they are not empowered to regulate or diſpoſe of ſtate ſections of the union. The citizens of theſe territorial ſections, are citizens of the United States, and they have all the rights of citizens of the United States; but ſuch rights do not include thoſe political rights ariſing from ſtate compacts or governments, which are diſſimilar in different ſtates. Suppoſing the general government or treaty making power, have no right to add or unite ſtates and ſtate citizens to the union, yet they have a power of adding or uniting to it territory, and territorial citizens of the United States.

The territory is ceded by the firſt article of the treaty; it will no longer be denied that the United States may conſtitutionally acquire territory. The third article declares that "the inhabitants of the ceded territory ſhall be incorporated in the union of the United States." And theſe words are ſaid to require the territory to be erected into a ſtate. This they do not expreſs, and the words are literally ſatisfied, by incorporating them into the union as a territory, and not as a ſtate. The conſtitution recognizes, and the practice warrants, an incorporation of a territory and its inhabitants into the union, without admitting either as a ſtate. And this conſtruction of the firſt member of the article, is neceſſary to ſhield its two other members, from a charge of ſurpluſage, and even of abſurdity. For if the words "the inhabitants of the ceded territory ſhall be incorporated in the union of the United States," intended that Louiſiana and its inhabitants ſhould become a ſtate in the union of ſtates, there exiſted no reaſon for proceeding to ſtipulate, that theſe ſame inhabitants ſhould be made "citizens as ſoon as poſſible, according to the principles of the federal conſtitution." Their admiſſion into the union of ſtates, would have made them citizens of the United States. Is it not then abſurd to ſuppoſe, that the firſt member of this third article, intended to admit Louiſiana into the union, as a ſtate, which would inſtantly entitle the inhabitants to the benefit of the article of the conſtitution, declaring, that "the citizens of each ſtate ſhall be entitled to all privileges and immunities of citizens in the ſeveral ſtates," and yet to have gone on to ſtipulate for citizenſhip, under the limitation, "as ſoon as poſſible, according to the principles of the federal conſtitution" after it had been beſtowed without limitation? Again; the concluding member of the article is to beſtow "protection in the mean time;" incorporating this ſtipulation, and the ſtipulation for citizenſhip, with the conſtruction which accuſes the treaty of unconſtitutionality, the article altogether muſt be underſtood thus, "the inhabitants of the ceded territory ſhall be taken into the union of ſtates, which will inſtantly give them all the rights of citizenſhip; after which they ſhall be made citizens as ſoon as poſſible; and after they are taken into the union of ſtates, they ſhall be protected in the interim between becoming a ſtate in the union, and being made citizens, in their liberty, property and religion."

By ſuppoſing the firſt member of the article to require that the inhabitants and their territory ſhall be incorporated in the union, in the known and recognized political character of a territory, theſe inconſiſtencies are avoided, and the article reconciled to the conſtitution as underſtood by the oppoſers of the bill; the ſtipulation alſo for citizenſhip 'as ſoon as poſſible' according to the principles of the conſtitution, and the delay meditated by theſe words and the ſubſequent words "in the mean time," ſo utterly inconſiſtent with inſtantaneous citizenſhip, which would follow an admiſſion into the union as a ſtate, are both fully explained. Being incorporated in the union as a territory, and not as a ſtate, a ſtipulation for citizenſhip became neceſſary; whereas it would have been unneſſary had the inhabitants been incorporated as a ſtate, and not as a territory. And as they were not to be inveſted with citizenſhip by becoming a ſtate, the delay which would occur between the incorporation of the territory into the union, and the arrival of the inhabitants to citizenſhip according to the principles of the conſtitution, under ſome uniform rule of naturalization, exhibited an interim, which demanded the concluding ſtipulation, for "protection in the mean time for liberty, property and religion." As a ſtate of the union, they would not have needed a ſtipulation for the ſafety of their "liberty, property and religion;" as a territory, this ſtipulation would govern and reſtrain the undefined power of congreſs to make "rules and regulations for territories."

If my conſtruction is correct, all objections to the treaty and to this bill for fulfilling it, on the ground of unconſtitutionality, are unfounded. The three diſtinct members of the third article, will be each ſeparately and diſtinctly complied with; firſt, by an incorporation of the territory and its inhabitants in the union, as a territory. Secondly, by admitting them to all the rights of citizens of the United States, under ſome uniform rule of naturalization; and thirdly, by protecting their liberty, property and religion, by "rules and regulations" to be "in the mean time" enacted by congreſs under a conſtitutional power extending to territories, but not to ſtates.

To prove the treaty unconſtitutional a member from Maſſachuſetts, (Mr. Pickering) has quoted from the 6th raticle of the conſtitution theſe words, "This conſtitution and the laws of the U. States which ſhall be made in purſuance thereof, and all treaties made or which ſhall be made, under the authority of the United States, ſhall be the ſupreme law of the land;" and he has reaſoned upon the ground, that the words "in purſuance thereof" referred to treaties, as well as to laws. But the difference between the phraſeology in relation to laws and to treaties is plain and remarkable; laws were to be made, "in purſuance of the conſtitution;" treaties "under the authority of the United States." This difference probably ariſes from the following conſideration. The objects of the legiſlative power could be foreſeen and defined; therefore laws are limited to be made "in purſuance of" the definitions of the objects of legiſlative power in the conſtitution. But the objects of the treaty making power could not be foreſeen, and are not defined; by confining the treaty-making power to a definition of its objects in the conſtitution, it can never be exerciſed, if no ſuch definition exiſts; and by miſapplying to the treaty-making power, the definitions of legiſlative power, every right poſſeſſed by the latter, would be opened to the former. But if the words "under the authority of the United States" are conſidered as having been applied to treaties in the place of theſe, "in purſuance of the conſtitution," which are applied to laws; becauſe the objects of treaties are not defined; then the treaty-making power, retains all the political attributes belonging to it, not inconſiſtent with the principle of agency or ſubordination, interwoven with our policy in all its parts. Among theſe is the right or attribute of acquiring territory. And it was probably the abſence of a definition as to the objects, of the treaty-making power, which ſuggeſted the precaution of checking it by two-thirds of the ſenate; thus ſubjecting it in this body, to the ſame reſtraints impoſed upon amendments to the conſtitution. Whether theſe obſervations in relation to the quotation, upon which the gentleman from Maſſachuſetts relied, do or do not prove, that the objects of the treaty-making power are undefined by the conſtitution, and that it is incorrect to condemn this treaty, by applying to it definitions made for legiſlative power, is immaterial; if the conſtruction I have given of the third article of the treaty is correct; becauſe that conſtruction proves its conſtitutionality upon the principles contended for by the gentleman himſelf; and if ſo, his reaſoning founded upon a conſtruction of the conſtitution, forbidding the erection of new ſtates to the treaty-making power, whether right or wrong, vaniſhes into ſmoke, as the third article requires no ſuch thing.

[*Debate to be continued.*]

LAWS OF THE UNITED STATES.

AN ACT

To enable the preſident of the United States to take poſſeſſion of the territory ceded by France to the United States, by the treaty concluded at Paris, on the thirtieth day of April laſt, and for the temporary government thereof.

Be it enacted by the ſenate and houſe of repreſentatives of the United States of America in congreſs aſſembled, That the preſident of the United States be, and he is hereby authoriſed, to take poſſeſſion of, and occupy the territory ceded by France to the United States, by the treaty concluded at Paris on the thirtieth day of April laſt, between the two nations; and that he may for that purpoſe, and in order to maintain in the ſaid territories the authority of the United States, employ any part of the army and navy of the United States, and of the force authoriſed by an act paſſed on the third day of March laſt, entitled, "an act directing a detachment from the militia of the United States, and for erecting certain arſenals" which he may deem neceſſary, and ſo much of the ſum appropriated by the ſaid act as may be neceſſary, is hereby appropriated for the purpoſe of carrying this act into effect; to be applied under the direction of the preſident of the United States.

Sect 2. *And be it further enacted,* That until the expiration of the preſent ſeſſion of congreſs, unleſs proviſion for the temporary government of the ſaid territory be ſooner made by congreſs, all the military, civil and judicial powers, exerciſed by the officers of the exiſting government of the ſame ſhall be veſted in ſuch perſon and perſons, and ſhall be exerciſed in ſuch manner as the preſident of the United States ſhall direct, for maintaining and protecting the inhabitants of Louiſiana in the free enjoyment of their liberty, property and religion.

NATH'L. MACON,
Speaker of the houſe of repreſentatives.
JOHN BROWN,
Preſident of the ſenate, pro tempore.
October 31, 1103.
APPROVED,
TH: JEFFERSON.

AN ACT

Making proviſion for the payment of claims of citizens of the United States on the government of France, the payment of which has been aſſumed by the United States, by virtue of the convention of the thirtieth of April, one thouſand eight hundred and three, between the United States and the French republic.

BE *it enacted by the Senate and Houſe of Repreſentatives of the United States of America in Congreſs aſſembled,* That a ſum not exceeding three millions ſeven hundred and fifty thouſand dollars (inclusive of a ſum of two millions of dollars, appropriated by the act of twenty-ſixth day of February, one thouſand eight hundred and three, entitled, "An act making further proviſion for the expences attending the intercourſe between the United States and foreign nations,") to be paid out of any monies in the treaſury, not otherwiſe appropriated, be, and the ſame hereby is appropriated for the purpoſe of diſcharging the claims of citizens of the United States againſt the government of France, the payment of which has been aſſumed by the government of the United States, by virtue of a convention made the thirtieth day of April, one thouſand eight hundred and three, between the United States of America and the French republic, reſpecting the ſaid claims.

Sect. 2. *And be it further enacted,* That the ſecretary of the treaſury ſhall cauſe to be paid at the treaſury of the United States, in conformity to the convention aforeſaid the amount of ſuch claims, abovementioned, as, under the proviſions of the ſaid convention, ſhall be awarded to the reſpective claimants; which payments ſhall be made on the orders of the miniſter plenipotentiary of the United States for the time being, to the French republic, in conformity with the convention aforeſaid, and the ſaid miniſter ſhall be charged on the treaſury books with the whole amount of ſuch payments, until he ſhall have exhibited ſatisfactory proof to the accounting officers of the treaſury that his orders, thus paid, have been iſſued in conformity with the proviſions of the ſaid convention.

Sect. 3. *And be it further enacted,* That the preſident of the United States be, he hereby is authoriſed to borrow, on the credit of the United States, to be applied to the purpoſes authoriſed by this act, a ſum not exceeding one million ſeven hundred and fifty thouſand dollars, at a rate of intereſt not exceeding ſix per centum per annum; reimburſeable out of the appropriation made by virtue of the firſt ſection of this act, at the pleaſure of the U. States, or at ſuch period, not exceeding five years from the time of obtaining the loan, as may be ſtipulated by contract; and it ſhall be lawful for the bank of the United States to lend the ſame.

Sect. 4. *And be it further enacted,* That ſo much of the duties on merchandize and tonnage as may be neceſſary, be, and the ſame is hereby appropriated for the purpoſe of paying the intereſt which ſhall accrue on the ſaid loan.

Sect. 5. *And be it further enacted,* That for defraying the expence incident to the inveſtigation of the claims above mentioned, there be appropriated a ſum not exceeding eighteen thouſand five hundred and ſeventy-five dollars, to be paid out of any monies in the treaſury not otherwiſe appropriated: *Provided,* That the compenſation to be made to any of the commiſſioners appointed, or to be appointed, in purſuance of the abovementioned convention, ſhall not exceed the rate of four thouſand four hundred and fifty dollars per annum; that the compenſation of their ſecretary ſhall not exceed the rate of two thouſand two hundred and twenty-five dollars per annum; and that the compenſation of the agent ſhall not exceed the rate of one thouſand dollars per annum.

NATH'L MACON,
Speaker of the houſe of repreſentatives.
JOHN BROWN,
Preſident of the ſenate, pro tempore.
November 10, 1803.
APPROVED,
TH: JEFFERSON.

AN ACT

Authoriſing the creation of a Stock to the amount of eleven millions two hundred and fifty thouſand dollars, for the purpoſe of carrying into effect the convention of the 30th of April, one thouſand eight hundred and three, between the United States of America and the French republic; and making proviſion for the payment of the ſame.

BE *it enacted by the ſenate and houſe of repreſentatives of the United States of America, in congreſs aſſembled,* That for the purpoſe of carrying into effect the convention of the thirtieth day of April, one thouſand eight hundred and three, between the United States of America and the French republic, the ſecretary of the treaſury be, and he is hereby authoriſed to cauſe to be conſtituted certificates of ſtock, ſigned by the regiſter of the treaſury and, in favor of the French republic, or of its aſſignees, the ſum of eleven millions two hundred and fifty thouſand dollars, bearing an intereſt of ſix per centum per annum from the time when poſſeſſion of Louiſiana ſhall have been obtained, in conformity with the treaty of the thirtieth day of April, one thouſand eight hundred and three, between the United States of America and the French republic, and in other reſpects conformable with the tenor of the convention aforeſaid, and the preſident of the United States is authoriſed to cauſe the ſaid certificates of ſtock to be delivered to the government of France, or to ſuch perſon or perſons as ſhall be authoriſed to receive them in three months at moſt after the exchange of the ratifications of the treaty aforeſaid, and after Louiſiana ſhall be taken poſſeſſion of in the name of the government of the United States; and credit, or credits, to the proprietors thereof, ſhall thereupon be entered and given on the books of the treaſury, in like manner as for the preſent domeſtic funded debt, which ſaid credits or ſtock ſhall thereafter be transferable only on the books of the treaſury of the United States, by the proprietor or proprietors of ſuch ſtock, his, her or their attorney: And the faith of the United States is hereby pledged for the payment of the intereſt and for the reimburſement of the principal of the ſaid ſtock, in conformity with the proviſions of the ſaid convention. *Provided however,* that the ſecretary of the treaſury may, with the approbation of the preſident of the United States, conſent to diſcharge the ſaid ſtock in four equal annual inſtalments, and alſo ſhorten the periods fixed by the convention for its reimburſement: And provided alſo, that every proprietor of the ſaid ſtock may until otherwiſe directed by law, on ſurrendering his certificate of ſuch ſtock receive another to the ſame amount, and having an intereſt of ſix per centum per annum, payable quarter yearly at the treaſury of the United States.