

NAVIGATION  
OF THE  
MISSISSIPPI.

CONGRESS OF THE UNITED STATES.

In Senate, May the 15th, 1794.

Mr. Ellsworth, from the Committee to whom was referred certain resolutions moved for the 15th of April last by the Senators of Kentucky relating to the navigation of the Mississippi, and the negotiation at the court of Spain, reported,

"That in the negotiation now carrying on at Madrid between the United States and Spain, the right of the former to the free navigation of the Mississippi is well asserted and demonstrated, and their claim to its enjoyment is pursued with the assiduity and firmness which the magnitude of the object demands, and will doubtless continue to be so pursued until the object shall be obtained, or adverse circumstances render the further progress of the negotiation impracticable. That in the present state of the business it would be improper in Congress to interfere. But in order to satisfy the citizens of the United States more immediately interested in the event of this negotiation, that the United States have uniformly asserted their right to the free use of the navigation of the river Mississippi; and have employed and now continue to pursue such measures as are best adapted to obtain the enjoyment of this important territorial right, the committee recommend that it be.

"Resolved by the Senate, That the President of the United States be, and he is hereby requested to cause to be communicated to the executive of the state of Kentucky, such part of the existing negotiation between the United States and Spain relative to this subject as he may deem advisable, and consistent with the course of negotiation."

And the report was adopted.

Ordered, That the secretary lay a copy of this proceeding before the President of the United States.

Attest,

SAM. A. OTIS, Secretary.

In pursuance of the Resolution of the Senate, the President of the United States sent a special messenger to Kentucky, to detail a faithful history of the Negotiation pending between the United States and the Court of Madrid, respecting the Navigation of the Mississippi.

The following is a Letter from James Innes, Esq. the Commissioner on this occasion, to his Excellency Isaac Shelby, Governor of Kentucky.

State of Kentucky, Frankfort, Feb. 15, 1795.

SIR,

I was duly honored with your favor of the 21st of January, in answer to mine of the 16th of the same month, and in conformity to the plan I took the liberty to suggest, which you have been pleased to approve—I shall now proceed to make to you the communications with which I am charged.

In presenting to public view, the origin and progress of the negotiation now depending between the United States of America and the court of Madrid, respecting the navigation of the Mississippi, it may not be irrelevant, to take a retrospective survey of the conduct of the Spanish government, towards the United States, at that period of their late war with England, when the American revolution began more interestingly to attract the attention of the nations of Europe.—By reverting to that juncture of our affairs, it will readily occur to every recollecting mind, that the conduct of the Spanish court was more like-warm, and distant towards the American states, than that of any European power who from principles of long established enmity and rivalry, was equally interested in the dismemberment, and consequent debility of the British empire—and altho' under the family compact of the house of Bourbon, that nation, in 1778, entered into the war against England, as the ally and associate of France, yet she made no formal recognition of the independence of the United States; and neither in the origin, or termination of the war did she seem to pay the least regard to the political interests of seceded America. Whether this cold conduct on the part of Spain, proceeded from the discordancy of the principles of her government, from those which produced our revolution, and the proximity of our chartered boundaries, to her possessions on this continent; it is not material at this day to enquire: But it is I believe, a fact, that altho' Congress kept an agent with competent powers, at the Court of Ma-

drid, from a very early period of the late war, yet no pact or treaty of any kind, was ever entered into between the two nations.

This reservedness on the part of the Spanish nation, and other intimate connection with France, during the existence of a monarchical form of government in that country, rendered the political department of the United States towards the former nation, a matter of delicacy and importance. By the friendship and assistance of France, the establishment of our independence had been accelerated, & should it have been prematurely jeopardized by a conflict with any nation in Europe; (and one at least, we may suppose there was, panning with eager wishes for such an inauspicious event to us) on France we must have again relied, for reiterated assistance. Such being our real political situation, immediately after our peace with England in 1783—the circumspection and prudence, which it behoved the councils of America, to observe with respect to any measure which might tend in the smallest degree to shake the alliance and good understanding subsisting between France and the United States, or even embarrass that nation in the conduct she was to observe towards her new ally and her old friend, must be strikingly obvious to every person who bears in mind how much the safety and happiness of America, at that early epoch of her independence, rested on the political relations, in which certain powers of Europe stood with respect to each other, and to herself.

But we were relieved from this delicate posture of our affairs, with respect to Spain by the arrival at New-York, the then seat of Congress, of Don Diego de Gardoqui, in quality of Ambassador from that court, some time in the spring of 1785, about two years after the peace at Paris. This gentleman having had his audience, and produced his credentials, by which it appeared, that he was invested with authority to treat with the United States, on the subject of commercial arrangements; Congress without delay, appointed John Jay, Esq. their secretary for foreign affairs, to enter into the negotiation with him. Being specially enjoined to make the right of the United States to the free use of the Mississippi, from its source to the ocean, the leading feature of any treaty, which should be entered into between the contracting parties.

This claim of the United States was brought forward, and pressed, at a very early period of the negotiation, and continued to be presented in different shapes—through the whole course of very lengthy, and tedious transactions, which took place between the Congressional and Spanish agents, on the subject of a commercial treaty. Mr. Gardoqui received the assertion of this right with affected surprise, denied its admissibility as part of the contemplated treaty, and asserted with vehemence, that this court would never assent to its validity on any principles—He invariably manifested an irritation of temper, whenever our right to the navigation of the Mississippi was urged upon him. This intemperance of the ambassador was deemed symptomatic of the spirit which predominated on that subject at his court, with which, from the circumstances before hinted at, good policy dictated to America, the propriety of observing the strictest harmony.

Thus circumstanced, the American negotiator, referred to the project, of ceding to Spain the exclusive navigation of the Mississippi for twenty-five years, which was intended to operate, not as an abandonment of the right of the United States but as a mean to obtain an end, to wit, the recognition of that right, on the part of Spain, after the expiration of the above stipulated period. I know well, that the proposal of this measure, is still fore to the recollection of our fellow citizens on the western waters, and that it created great alarms in the minds of the inhabitants of the Atlantic States also—But in narrating the mere history of it, let me not be considered as the decider of its policy, or expediency. It forms a link, in the chain of historical facts, which I shall candidly unfold to your view, and in that spirit of candor, I can assert to you, that the proposition now alluded to, as it stands presented on the records of Congress, was not intended to generate a renunciation but on the contrary, an acknowledged establishment of the right of the United States, to the free use of the Mississippi, upon this principle—That if Spain accepted this cession from the United States, to the exclusive navigation of that river, for a stipulated time, the acknowledgment of their right to the navigation, followed as an unavoidable consequence: For the United States must have possessed the right, before they could transfer it, and the acceptance of the cession was an acknowledgment of the possession.—The discord which this proposed expedient produced in the councils of America, is too notorious to require repetition. It occupied not only the attention of Congress for many months, but the subject was also taken up by some of the state legislatures, who denounced the measure as unconstitutional, destructive and dishonorable. In fact, this negotiation, which had exhausted much time, and had progressed so far, as to reduce into shape, some specific articles for future arrangements, between the two nations, was arrested in its course: and it was ultimately deemed proper by the then Congress, that the whole business of the Spanish treaty, which from the management of it had very much agitated the public mind of America, should be dismissed from further discussion, and turned over as an object of consideration of the present government of America, which had been adopted, and was then upon the eve of being put into action. Much about the same period too, in

July 1789, Mr. Gardoqui received permission from his court, to go back to Spain, on his own private affairs, intending to return, to reaffirm the treaty, as soon as the new governmental system should become fully organized, and begin its functions. It so happened, however, that after the institution of the general government, Mr. Gardoqui, the only person empowered by the Spanish court, to treat with the United States, did not according to expectations, founded on his assurances, return to America; and the secretary of state, who was appointed in September 1789, to whose department, this species of executive business appertained, having not arrived from France, the affair of the treaty with Spain, could not be immediately acted upon on account of the absence of the respective agents of the two nations: yet notwithstanding these obstacles, the executive of the United States did not permit our claim to the navigation of the Mississippi to sleep.

The nature of the connexions which subsisted at this period, between France and the United States, and between France and Spain, is well known, and has been alluded to. It was perfectly understood by the American government, that altho' France favoured the pretensions of Spain to the exclusive navigation of the Mississippi within her own boundaries, yet she was well inclined to the prosperity of the United States, and would wish to see an extension of our commerce, of the benefits of which, from existing treaties, she would probably participate. The court of Versailles, therefore, was moved to interpose its mediatorial influence, to induce the court of Madrid to acknowledge our right to the navigation of the Mississippi; and this interposition would probably have produced efficacious consequences, had not the rapid progress of the French Revolution, which at first reformed, and afterwards abolished monarchy, cut off all intercourse between the two courts, and placed them in a state of hostility to each other.

It was expected, that the re-assertion of the Spanish treaty would commence under the auspices of the new government on this continent, so soon as Mr. Gardoqui should return, an event which never happened, his place in the diplomatic line being supplied by two gentlemen in the characters of Commissioners from the Spanish court. By them it was proposed, that the Executive of the United States should depute some persons to the court of Madrid to revive the negotiation which Mr. Gardoqui was first authorized to originate in America, altho' the transfer of the scene of negotiation from America to Europe, was an event which it was much wished could have been avoided, among other important considerations, on account of the inevitable delay which it would occasion; yet the proposition was immediately closed with. To give dispatch to this business, the agents to execute it were appointed in Europe. Mr. Short, our minister, resident at the Seven United Provinces, with Mr. Carmichael, our Charge des Affaires, at the court of Spain, were appointed Commissioners Plenipotentiary, to conduct this important negotiation.

The leading principles by which they were to be governed in the renewal of this treaty, were amply and forcibly delineated in the instructions which they received, in which our right to navigate the Mississippi from its source to the ocean, and the extension of the southern boundary of the United States, to the 31st degree of latitude north of the equator, resting on two solid and distinct foundations, to wit, The treaties of Paris of 1763, and of 1782-3; and the laws of nature and nations were directed to be insisted upon, as the indispensable preliminaries and *fine qua non* to the proposed treaty. It is farther enjoined, that any treaty which may be entered into, shall, in every other respect, be limited in its duration; but in regard to the above two articles, it shall be final and perpetual.

Our right to the navigation of the Mississippi, from its source to where our southern boundary strikes it, cannot be disputed. It is from that point downwards only, that the exclusive navigation is claimed by Spain; that is to say, where she holds the country on both sides. Leaving the Mississippi in that *statu quo*, the Spanish court it is believed, would, without hesitation, enter into commercial regulations with the United States, on terms of reciprocal benefit to both nations; but that it is declined on our part, until our right to the free use of the Mississippi shall be most unequivocally acknowledged, and established on principles never hereafter to be drawn into contestation.

But as the mere naked right to navigate the Mississippi would not, from the peculiar circumstances attending the western waters, be completely beneficial, without the use of a port of deposit for importations and exportations, some where upon the banks of that river about the mouth of it, contiguous to the sea—the Commissioners are instructed to endeavour to purchase, or otherwise obtain, on account of the United States, in a safe and proper position, the right of soil, in as much land as will commodiously answer that purpose.

The documents requiring our Resident at the Hague to repair to Madrid, in the capacity of Commissioner Plenipotentiary for the purposes before stated, having been attended in their transmission with considerable and very unfortunate delay, he did not arrive at that city as soon as was expected, which consequently retarded the revival of the negotiation. Mr. Short, however, reached the Spanish Court in the early part of 1792; from which period, in co-operation with his associate, Mr. Carmichael, the most unceasing efforts

have been made by them, to obtain the object of their mission.

There was a season since the re-commencement of this negotiation, when the Spanish and English nations seemed to be on the verge of hostilities, in which it was hoped that the former, from motives of policy and self-interest, (that most predominant motive with nations) would have been induced to have done an act of justice, by restoring to the United States an unembarrassed participation in the use of the Mississippi. But this prospect of discord was but of a short duration; a compromise of all disputes took place between those two courts, and Spain allied with England, soon became parties in the confederacy of despots against the liberties of France.

The political connexion existing at present between Spain and England, will not, it may be apprehended, be an advantageous event to our negotiation at the court of the former: for, I believe it has rarely happened, that the interests of the United States have been remarkably patronized in countries where British influence has preponderated.

Notwithstanding the embarrassments which it was feared a combination of political incidents in Europe would produce, our Commissioners were unremittingly assiduous in pressing the Spanish ministry to enter fully into the leading principles of the negotiation which they had come to Madrid for the purpose of reviving. After some ceremonious delay, Mr. Gardoqui was re-appointed by the Spanish court to re-commence this business.

The American commissioners brought forward our claim to the navigation of the Mississippi and the extent of our southern boundary, sustained by a memorial, replete with well arranged and irrefragable arguments, drawn from the stipulation of treaties, and the laws of nature and nations. To this memorial the Spanish agent did not return an answer; and the discussion of the merits of the above memorial, though not positively denied, yet has been cautiously and rather vexatiously avoided, by the Spanish minister, by resorting to every species of evasion and procrastination, which the pompous parade and ceremonies of European courts can readily supply. This unwarrantable and dilatory conduct of the court of Spain was soon perceived, and considered in its proper light, by the executive of the United States, whose determination it had been from the first, to pursue our claim to the Mississippi with *temper*, yet *firmness*; and to prevent, if possible, an abrupt schism of a negotiation, which had been with so much difficulty re-introduced on the tapis, until every principle of reason, and argument appendant to it, should be fairly discussed and exhausted.

In order, therefore, to cut off all farther retardments which might originate from ceremonies, and formal exceptions, flowing from the alleged incompetency of powers, and the dignity of diplomatic office, it was determined to dispatch an envoy extraordinary to the court of Madrid, most unexceptionally and copiously authorized in every particular, to bring this tedious negotiation to an end. To effect this, the concurrence of the Senate was necessary, which was at that time not in session; yet, the executive, anxious to procure in time a proper character for so important an undertaking, caused an application to be made first to Mr. Thomas Jefferson, and next to Mr. Patrick Henry, (two citizens equally illustrious for their patriotism and great talents, and also well known to be warmly devoted to the prosperity of the western country) to enter upon this embassy.

They having both declined this office, for the sake of expedition, among other weighty considerations, Mr. Pinckney, the American minister at the court of London, has been ordered to hold himself in a state of preparation to repair most expeditiously to the court of Madrid, who, it is probable, is at this moment occupied in the arduous affairs of the Spanish treaty, as his powers only waited for the sanction of the Senate, which has been long since convened. His instructions will be similar to those given to the commissioners, Short and Carmichael. *He will press not only our rights, but will derive all the aid to our interests, which may arise collaterally from the events of the present war in Europe, or any influence which other circumstances may give to the United States.*

At this distance, and in our present state of information, it will be difficult to assert, what may be the immediate event of this negotiation, which seems to be capable of being affected by a variety of contingencies beyond the controul of the American government.—We have indisputable right on our side, which it is much to be wished for the happiness of mankind, should always form the rule of decision amongst nations. But perhaps there is much reason to lament, that in the old government of the world, right is too often resolved into power.

As a young nation, just taking our

stand among the empires of the world before we have arrived to that maturity of strength and vigor, which a thousand combining events promise we shall speedily attain, it has been deemed the wiser policy, rather to establish our rights by negotiation, than by a premature resort to the *ultimo ratio*: the first being a safer and more certain mode of redress; and such an one as the present situation of the United States lays them under an almost permanent necessity to observe the temporary abstinence from the exercise of a right, which at this period, a combination of political events render it prudent for us to observe, can never be construed into a dereliction of that right.

There is no man who will cast his eyes on the immense and fertile vales which border on the western waters, and mark the rapid progress, which population, agriculture, and all the useful arts are making among them, that can one moment doubt, but that these channels, which beneficent nature has opened for the diffusion of the superabundance of all the necessaries and comforts of life, yielded by these happy regions, among the poorer nations of the earth, *must* be applied to their great providential end: notwithstanding the obstructions at present proposed by an unjust, narrow, and short-sighted policy. It is an event which the interest of Spain herself desiderates, could she but view that interest through the proper medium. It is an event which the happiness of the human species requires. It is an event in which the United States are all interested.

I am well aware of the jealous apprehensions which are entertained, that some states in the Union are averse to opening the navigation of the Mississippi; this jealousy, as it extends to states, I am confident, embraces too extensive a range. For little minded, local, anti-federal politicians, who infest, in a greater or smaller degree, every state in the Union, I will not be answerable; yet, I believe I may safely affirm, that the interests of the Union at large, coincide in the establishment of this important right; and that to whatever object their interests point, their government will endeavor to attain. There are two strong political considerations, which will impel the United States, conjointly to struggle without ceasing, until the navigation of the Mississippi is obtained.

I mean the principles of national right and interest.

The right of the United States to the navigation of the Mississippi being established, as it most incontestably is, on the double basis of political compacts, and the titles derived from the laws of nature and nations, I know not, on what more substantial ground rest their rights to navigate the waters pouring through their territories into the Atlantic ocean. To resign one right to the arm of power, would be establishing a precedent, by which their others might be claimed and taken: all the motives, therefore, flowing from the consideration of political safety, and national pride, aided by fraternal incitements would stimulate every state in the Union, to make one cause, when the last necessity shall demand it, to reclaim and vindicate this suspended and violated right.

But the interests of the Atlantic states are involved in the unimpeded navigation of the Mississippi, on two principles.

The results of the exports through the Western waters will, with a very few exceptions, come into their ports, which will not only greatly augment the national revenue accruing from the import and duties on imported articles, but will be beneficial also to merchants, and others, residing at the particular ports of importation.

Besides, the transportation of the commodities of the country on this side the Apalachian mountains, which will be bulky in their nature, to the markets in the American and European seas, will furnish considerable employment to the seamen and ships, of the maritime states, which it will be the interest of the western merchants rather to employ than to attempt the building of vessels proper for transmarine voyages on their own waters, amidst the almost insufferable difficulties that must attend such an undertaking, which, if even practicable, necessary seamen would be wanting, who are always scarce in countries where lands are fertile and abundant, and easily to be acquired.

In addition to this consideration, the peculiar nature of the inland navigation of the western waters, will never furnish a nursery for sailors. The most expert navigator of the waters of the Ohio, would find himself perfectly helpless and bewildered on the deep and boisterous elements of the ocean.

The principles of national policy and interest, thus combining to make the navigation of the Mississippi as much the common cause of the United States, as any other right they possess, it ought naturally to be presumed, until the reverse shall be shown, and which I think never can be done, that that right has neither ever been, nor ever will be abandoned or neglected.