

CONGRESS.

HOUSE OF REPRESENTATIVES

Friday, March 18.

Debate on Mr. Livingston's resolution continued.

Mr. Livingston's speech concluded.

2d. The second argument that had been used to deprive the legislature of any right of interference, in cases of this kind, was drawn from the uniform practice of the government ever since its formation. The gentleman from South Carolina (Mr. Smith) who made this objection, had cited one instance of this practice in the resolution directing treaties to be published with the laws, and had adverted to the appropriations for the Indian treaties (under the general head of the military establishment) as favoring his principle. As to the resolution, Mr. Livingston said there was no doubt that treaties, when properly sanctioned, ought to be observed, and therefore the resolution was proper, that they ought to be promulgated. On the subject of appropriation, it had been well observed by a gentleman from Virginia, (Mr. Giles) that the house exercised as much discretion in granting the supply, by way of addition to the military appropriations as if it had been given specially for the purposes of the treaty. But the truth is, said Mr. Livingston, that an accurate examination into the communications of the Executive, in analogous cases, and the proceedings of this house, will form a strong, I think an irresistible argument in favor of the resolution. It would appear, he said, from the view he was about to take, that from the first establishment of the Constitution until the negotiation of this treaty was begun, the executive had been in habits of free communication with the Legislature as to our external relations: that their authority, in questions of commerce, navigation, boundary and intercourse, with the Indian tribes, had been expressly recognized even when difficulties on these questions were to be adjusted by treaty.

The first case related to a provision for an Indian treaty, and was suggested by the President in a message of the 7th of August 1789, in which he says, "If it should be the judgment of Congress that it would be most expedient to terminate all differences in the Southern district, and to lay the foundation for future confidence by an amicable treaty with the Indian tribes in that quarter, I think proper to suggest the consideration of the expediency of instituting a temporary commission for that purpose, to consist of three persons, whose authority should expire with the occasion."

In consequence of this message, Congress took into consideration the expediency of the measure recommended to them, and passed the act of the 26th of Aug. in the same year appropriating 20,000 dollars for defraying the expence of negotiating and treating with the Indian tribes, and authorizing the appointment of commissioners.

The President having appointed commissioners to treat under the direction of the act, gave them instructions which were communicated to the house and from which this is an extract. "You will please to observe, that the whole sum that can be constitutionally expended is 20,000 dollars, and that the same cannot be extended."

Nothing having been effected by the commissioners, the President mentioned the business again in his address to both Houses on the 1st of January 1792.

In the month of March in the same year, the house of representatives adopted the following resolution, recommended by a select committee: "That provision ought to be made by law for holding a treaty to establish peace between the United States and the Wabash, Miami, and other nations of Indians, North West of the river Ohio; also for regulating trade and intercourse with the Indian tribes, and the mode of extinguishing their claims to lands within the limits of the United States." On the 29th March following, a bill passed the house of representatives the title of which was amended in Senate and passed, appropriating 20,000 dollars for purposes expressed in the preceding resolution.

Mr. Livingston said, this case was important, as it was the first communication relative to a treaty that was made under the Constitution, and attentive examination of its different parts would show that very different ideas were then entertained from those which were now enforced. He would first observe, that the discretion of the house of representatives, as to commerce with foreign nations, stood precisely on the same footing, with that which they ought to exercise in regulating intercourse with the Indian tribes; that if one could be done without their concurrence by treaty, the other might also. And that therefore, when the President recognized their right to deliberate in one case he virtually did it in the other. Let us then attend to the language of the message (said Mr. Livingston) and we shall find that right of deliberation most expressly referred to. "If it should be the judgment of Congress that it would be most expedient," what can be more explicit than this language, and again, "I think proper to suggest the consideration of the expediency of instituting a temporary commission." Here the same discretion is not only applied to, but the President at that time supposing that no implicated power could deprive Congress of the right to regulate trade and intercourse with the Indian tribes, submitted to their consideration, the expediency of appointing commissioners, they passed the necessary laws, and he instructed the commissioners, not in the language, that is now held, that they might stipulate for the payment of any sum, and that Congress would be obliged to find the means; but he tells them the "only sum that can be constitutionally expended is 20,000 dollars, and that the same cannot be extended why (if the doctrine is true, that we are under an obligation to comply with the terms of every treaty, made by the President and Senate) why did he say no further sum could constitutionally be expended? If that doctrine were indeed true, his language would have been—use what money may be necessary, contract for the payment of it, in your treaty, and Congress are constitutionally obliged to carry your stipulations into effect."

The resolution above quoted, Mr. L. said, was important, as it proved that Congress then supposed that they ought not only to provide by law for hold-

ing a treaty with the Indians, but that they also had the power, and ought to exercise it, of regulating trade and intercourse with the same people, and of preforming the mode of extinguishing their claims to lands within the United States; but all this, said he, it is now discovered may be done without their aid, by treaty.

The second instance of the exercise of this dreaded discretion, was in the law of the 3d of March, 1791, appropriating 20,000 dollars to enable the President to effect a negotiation of the treaty with Morocco. This originated in the Senate, and is a decided proof, that neither the President nor Senate had, at that period, any idea of the moral obligation that is now discovered, or they would, without the formality of a law, have at once stipulated with the new Emperor for the payment of the necessary sum, which must have been provided by the house.

In a third case, the President had thought proper to take the sense of that house in a business that of all others demanded secrecy, and under circumstances that would have prevented his making the application, if he had conceived himself at liberty to act without their concurrence: he adverted to the message of 30th December, 1790, where the President says, "I lay before you a report of the Secretary of State, on the subject of the citizens of the United States in captivity at Algiers, that you may provide in their behalf what to you shall seem expedient."

No act having been passed by Congress, in consequence of this message, the President did not conceive himself authorized to bind the United States by treaty, for the necessary ransom of their citizens; and therefore nothing was concluded until after a subsequent message and previous appropriation in the year 1793, when another message was sent relative to the negotiations with Morocco and Algiers, then pending, "while it is proper (he says) that our citizens should know that subjects which so much concern their interests and feelings, have duly engaged the attention of their legislature and executive; it would still be improper that some part of this communication should be made known"—part of this message, therefore, was confidentially communicated, which shews, (Mr. L. said) on some occasions it was not deemed imprudent to trust this house with the secrets of the cabinet. And in consequence of this message, a law was passed appropriating 100,000 dollars for the purchase of a peace with the Algerines. It was ostensibly appropriated to the above general purpose, but the intent was well understood.

The next transaction that he should quote, Mr. L. said, as favorable to his doctrine, was the message of the President of the 5th Dec. 1793, and the measure to which it gave rise. The President says, "As the present situation of the several nations of Europe and especially those with which the United States have important relations, cannot but render the state of things between them and us matter of interesting inquiry to the legislature, and may indeed give rise to deliberations to which they alone are competent, I have thought it my duty to communicate to them certain correspondences which have taken place."

This message, Mr. L. said, accompanied the papers relative to France, to Great Britain and to Spain: and a question would immediately occur, what were the deliberations to which the President then thought the legislature alone was competent, and which he therefore thought it his duty to communicate. All our disputes with the nations referred to in the message, were such as on the new construction of the treaty power, he could have adjusted by compact without any reference to the house of representatives; but it is plain, by the express words of the message, that he did not believe that construction. It was no answer, Mr. Livingston said, to the argument drawn from this transaction, to say, that the President only submitted the question of war or peace to the legislature by this message. 1. Because the message related to the three principal nations in Europe, and he never could have imagined that Congress would have deliberated on going to war with them all.

2. This was evidently not his intention, because as soon as measures were proposed in that house, which he supposed would lead to a rupture with one of those nations, all these measures were passed by the appointment of an envoy and the commencement of negotiation.

It was clear, then, that the President thought the matters communicated by his message, which related to commerce and boundary, were constitutionally vested in the discretion of Congress. This idea was corroborated by the words of a message relative to the negotiation with Spain. "And therefore, by and with the advice and consent of the Senate, I appointed commissioners plenipotentiary for negotiating and concluding a treaty with that country, on the several subjects of boundary, navigation and commerce, and gave them the instructions now communicated." Why, said Mr. Livingston, communicate the instructions to ministers? Because they related to commerce, to navigation, to boundary, on all of which subjects the President must have thought the legislature had a right of decision. He must have thought so at that period, but, unfortunately, all precedent of free communication ended here. Mr. Jay's negotiation began; and a different construction was assumed.

From this view of the acts of government, he trusted that a far different impression would be made than that the doctrine he contended for was a new one, originating in opposition to the English treaty, and a desire to disorganize the government. That, on the contrary, it had been declared by the President, acquiesced in by the Senate, and acted upon by the house of Representatives.

3. One other test of construction remained for examination. It had been relied on by a member from S. C. (Mr. Smith) he would therefore notice it. It was the present opinion of the citizens of the United States, as expressed by their town meetings and by their legislatures. He did not suppose the sense of the people on this subject could be perfectly collected, it could only be known by their applications to this house; and in those an appeal was made to that very discretion which it was contended did not exist. The petitions in favor of the

treaty, and those which were presented against it, both acknowledged the right of the house to interfere. The legislatures spoke the same language: some had approved of the conduct of those who made the treaty; but all, he believed, were silent as to the power of this house. As to the town meetings, he did not expect to hear them quoted as authority by the gentleman who had introduced them. His fellow-citizens of New York, Mr. Livingston said, would be surprized, when they heard the name of the gentleman who had ushered them on the floor of that house; since they were there, however, let us hear the language of their address to the President. They need not be ashamed of it, and he would answer for its contradicting the position of the gentleman who quoted it. [He then read several extracts from the New York resolves, to shew that they thought the rights of the house were infringed by the treaty].

Thus, said Mr. Livingston, to whatever source of argument we refer, we find the constitutional powers of this house fully established; whether we recur to the words of the constitution, where the power is expressly given, and is to be lost only by implication, whether we have recourse to the opinions of the majorities who adopted the constitution, to the uniform practice of the government under it, to the opinions of our constituents as expressed in their petitions, or to the analogous proceedings in a government constructed in this particular, like our own. Yet, after all this, we are told, that if we question the supremacy of the treaty-making power, we commit treason against the constituted authorities, and were in rebellion against government. These were serious charges, and made in improper language. He had not been so long in public life as the gentleman who made them; but he would boldly pronounce it unconstitutional and improper. Besides, this language is wrong in another view. It may frighten men of weak nerves from a worthy pursuit; for my own part, when I heard the member from Vermont, compare the authority of the President and Senate to the majesty of Heaven, and the proclamation to the voice of thunder; when he appealed to his services for his country, and shewed the wounds received in her defence; when he completed his pathetic address by a charge of treason and rebellion, I was, for a moment, astonished at my own temerity; his eloquence so overpowered me, that

"Methought the Clouds did speak and tell me of it,
"The winds did sing it to me, and the thunder,
"That deep and dreadful organ-pipe, pronounced it,
"The charge of treason."

I was however relieved from this trepidation, (continued Mr. Livingston) by a moments reflection, which convinced me that all the dreadful consequences arose from the gentleman's taking that for granted which remained to be proved. He had only assumed that the measure was unconstitutional, and then the rest followed of course. From my soul, (said Mr. Livingston) I honor the veteran who has fought to establish the liberties of his country; I look with reverence on his wound; I feel humbled in his presence, and regret that a tender age did not permit me to share his glorious deeds. I can forgive every thing that such a man can say, when he imagines the liberty for which he has fought is about to be destroyed; but I cannot extend my charity to men, who, without the same merits, coolly re-echo the charge. Another observation had escaped from the same member in the heat of debate, which another from South-Carolina (Mr. Smith) to whom he before alluded, had repeated with high encomiums. It was this that encroachments were more to be apprehended from the popular, than from any other branch of government. This doctrine, Mr. Livingston considered as highly pernicious to liberty; and as highly unfounded in fact, as it was improper. Where, he asked, will gentleman find facts to justify their opinions. If it were true, there would now be none but popular governments in existence; they would have encroached on the kingly power, until all power was centered in them alone. The sad reverse, however was the fact. All Europe had once been free; all Europe with the exception of France and Switzerland, were now in chains. Where, then, would historical facts be found to justify the charge? In the obsequious Parliament of Britain? In the houseless assembly of Naples. Or the degraded Cortes of Spain? In the hundred years sleep that had involved the states of Portugal? Would gentlemen look for them in the tyranny of Russia and Germany? In the military despotism of Prussia, or the ecclesiastical one of Rome? why, then, if unsupported either by theory or fact, are the people told, be on your guard against the popular part of your constitution? Shut your eyes to the conduct of the Executive and Senate, they can never encroach; but beware of the ambition of your Representatives!

He would notice one other objection that had been raised, and then conclude. It was said, if the President supposed these papers necessary, he would have sent them; and that we might offend him by this request. Mr. Livingston said, this was not the first time that measures were endeavored to be carried, by appealing to the character of the President. He sincerely admired and respected the character of that great man; he was jealous of his reputation, and, as an American, was interested in his glory, no consideration should ever tempt him to destroy one leaf of his well earned laurels; but, while he had the honor of a seat in that house, he would resist every attempt to cover improper measures by the splendor of any man's reputation.

He had before remarked the singular tendency of argument in this question towards the mystery of theology; it was not only predestination and free agency, we are now told that we must have full faith in the President, and that he and the Senate can do no wrong. What, Sir, (said Mr. Livingston) has, faith, banished by modern infidelity from religion, taken refuge in politics? has the doctrine of human infallibility been transferred from the ritual into our constitution?

Mr. Livingston concluded begging the pardon of the committee for the unavoidable length of his investigation; he felt how utterly incapable he had been to the task, but he was consoled by reflecting on the eloquence and ability by which the motion had been supported by others.

Saturday, May 7.

Messrs. Parker, Findley, Crabb, Sprigg, &c. and Claiborne presented petitions, in favour of the British treaty.

Mr. Murray presented an address from the Grand Jury of Kent county, Delaware, to the same effect.

Mr. Clopton presented resolutions respecting the treaty, wishing the house of Representatives to use their own discretion in the business.

The Speaker presented resolutions and a petition from Huntingdon county, in favour of the treaty. Some debate took place upon the propriety of receiving the resolutions, on account of their being said to contain a censure on the proceedings of that house: they were read, the sense of the house was taken, and they were rejected. The petition with those presented above, were laid upon the table.

The bill for the relief of Sylvanus Bourne, was read a third time and passed.

A bill to regulate compensation to clerks, and a bill to regulate quarantine, were twice read and referred to a committee of the whole.

Mr. S. Smith laid a resolution upon the table, putting all nations upon the same footing, with respect to the selling of vessels and goods within the ports of the United States, by recommending it to be enacted that no nation shall be allowed in future to sell their prizes within the United States.

A message was received from the Senate with the bill authorizing the sale of lands north west of the river Ohio, with several amendments thereto. The amendments were read and referred to a select committee.

Mr. W. Smith, from the committee of ways and means, reported two resolutions, which were referred to a committee of the whole.

The house resolved itself into a committee of the whole, Mr. W. Smith in the chair, upon the bill for laying certain duties on carriages, and for repealing a former act for the same purpose, which being gone through, the house took it up, and it was ordered to be engrossed for a third reading.

Mr. Sitgreaves, from the committee to whom was referred the memorial of certain creditors of the French Republic, residing in Philadelphia, reported that they found the extent of the claims of the memorialists sufficient, to entitle them to the interference of Congress; but, as the session was drawing to a close, the select committee wished to be discharged from further consideration of the memorial, and that it might be referred to the secretary of state, to report thereon, at the next session of Congress. The report was twice read and agreed to.

The house resolved itself into a committee of the whole, Mr. Wm. Smith in the chair, on the bill authorizing Ebenezer Zane to locate certain lands north west of the river Ohio. After some debate thereon, in order to give time for making some enquiries on the subject, the committee rose, and had leave to sit again.

Mr. Tracy, from the committee of claims, made a report, which being gone through and agreed to, the house adjourned.

The readers of the account of yesterday's proceedings on the Tennessee business, will notice that by the ordinance of Congress of July 1787, the south western territory was to be laid out into States, and each State, containing 60,000 free inhabitants, was entitled to admission into the Union; the numbers returned by the census taken by the authority of the temporary government were 66,649 free inhabitants and 10,613 slaves in the territory south of the Ohio. The President of the United States did not give an opinion in his communication, that the State of Tennessee should be admitted into the Union, as stated in Friday's minutes, but referred to the ordinance above mentioned, and the act of session for the rights of the territory.

Friday, 6th inst. Mr. Gleason presented 11 petitions from the County of Albany, containing 1057 signers in favor of the British Treaty.

MRS. MARSHALL'S NIGHT New Theatre.

On Monday Evening, May 9, will be presented celebrated Tragedy, never performed here, called

Alexander the Great.

Or, THE RIVAL QUEENS.

- Alexander, Mr. Moreton.
Hephestion, Mr. Warrell, jun.
Lyimachus, Mr. Marshall.
Cassander, Mr. Green.
Polyperchon, Mr. Darley, jun.
Philip, Mr. Morgan.
Citus, Mr. Whitlock.
Thestalus, Mr. Warrell.
Perdiccas, Mr. Beete.
Eumenes, Mr. Francis.
Slave, Mr. Mitchell.
Roxana, Mrs. Shaw.
Syfigambis, Mrs. Rowson.
Parafatis, Miss Willem.
Statira, Mrs. Marshall.

In act II the grand Triumphant Entry of Alexander into Babylon, attended by his Generals, Captains, &c. with banners, trophies, &c. The Vocal Parts by Mrs. Warrell, Mrs. Mitchell, Mrs. Bates, Mrs. Harve, Mrs. Gillingham, Mrs. Doctor, Miss Milbourne, Mrs. De Marque, &c.

To which will be added a grand serious Pantomime, never performed here, called

The Defenter of Naples.

As performed at the Theatres Covent Garden, Drury Lane, and the Royalty, upwards of 200 nights.

- General, Sig. Doctor.
Rufflet, Mr. Warrell.
Henry, Mr. Marshall.
Skirmish, Mr. Bates.
Simkin, Mr. Francis.
Jailor, Mr. Blisset.
Officers, Messrs. Darley, jun. Warrell, jun. Mitchell, Beete.
Margaret, Mrs. Rowson.
Jenny, Miss Milbourne.
Louisa, Mrs. Marshall.

Villagers, Messrs. Morgan, Solomon, T. Warrell—Miss Willem, Mrs. Bates, Mrs. Harve, Mrs. Solomon, Mrs. Lege, Mrs. Gillingham, Mrs. Doctor, &c.

In act II. a solemn military procession to the execution of Henry. The Pantomime under the direction of Mr. Francis. Tickets to be had at the usual places, and of Mrs. Marshall No. 23 north Ninth Street.

This Day published, AND for sale by B. DAVIES, No. 68, High Street, H. & P. RICE, No. 50, do. and J. ORMDROD, No. 41, Chestnut Street.

Mr. Burke's letter to the Duke of Bedford.

May 9.