

H. OF R.]

*Treaty with Great Britain.*

[MARCH, 1796.]

to risk them in ordinary cases. In some cases they must be risked, and to decide what those cases are, is an object of the soundest discretion. The subject, he said, was capable of being placed in many other interesting points of view, which the late hour of the day and the great length of the discussion then rendered improper. Some things had been said which he was sorry to hear; which tended not to enlighten, but to irritate. He would not now remark on them, because he wished and hoped that they might be forgotten, that they might pass into oblivion, and leave the field open for truth and good sense. All, he hoped, would inquire with care, and act for the public good, from the best of their judgment. In that case, their conclusions would not be far wrong; and if they should, he hoped and trusted, that there was strength in the Constitution to correct the error.

Mr. H. having sat down, the question was taken upon Mr. LIVINGSTON'S resolution, which is in the words following:

"Resolved, That the President of the United States be requested to lay before this House a copy of the instructions to the Minister of the United States, who negotiated the Treaty with the King of Great Britain, communicated by his Message of the first of March, together with the correspondence and other documents relative to the said Treaty; excepting such of said papers as any existing negotiation may render improper to be disclosed."

The division on this resolution, in Committee of the Whole, was—for the resolution 61, against it 38—majority 23.

The resolution was then taken up in the House, and the yeas and nays being called upon it, were taken, and stood yeas 62, nays 37, as follows:

YEAS.—Theodorus Bailey, David Bard, Abraham Baldwin, Lemuel Benton, Thomas Blount Richard Brent, Nathan Bryan, Dempsey Burges, Samuel J. Cabell, Gabriel Christie, Thomas Claiborne, John Clop-ton, Isaac Coles, Henry Dearborn, George Dent, Gabriel Duvall, Samuel Earle, William Findley, Jesse Franklin, Albert Gallatin, William B. Giles, James Gillespie, Andrew Gregg, Christopher Greenup, Wm. B. Grove, Wade Hampton, George Hancock, Carter B. Harrison, John Hathorn, Jonathan N. Havens, John Heath, James Holland, George Jackson Aaron Kitchell, Edward Livingston, Matthew Locke, William Lyman, Samuel Ma-clay, Nathaniel Macon, James Madison John Milledge, Andrew Moore, Frederick A. Muhlenberg, Anthony New, John Nicholas, Alexander D. Orr, John Page, Josiah Parker, John Patton, Francis Preston, John Richards, Robt. Rutherford, John S. Sherburne, Israel Smith, Samuel Smith, Thomas Sprigg, John Swanwick, Absalom Tatom, Philip Van Cortlandt, Joseph B. Varnum, Abraham Venable, and Richard Winn.

NAYS.—Benjamin Bourne, Theophilus Bradbury, Daniel Buck, Joshua Coit, Wm. Cooper, Abiel Foster, Dwight Foster, Nathaniel Freeman, jr., Ezekiel Gilbert, Nicholas Gilman, Henry Glen, Benjamin Goodhue, Chauncey Goodrich, Roger Griswold, Robert Goodloe Harper, Thomas Hartley, James Hillhouse, Wm. Hind-man, John Wilkes Kittera, Samuel Lyman, Francis Mal-bone, Wm. Vans Murray, John Reed, Theodore Sedg-wick, Samuel Sitgreaves, Jeremiah Smith, Nathaniel Smith, Isaac Smith, William Smith, Zephaniah Swift,

George Thatcher, Richard Thomas, Mark Thompson, Uriah Tracy, John E. Van Allen, Peleg Wadsworth, John Williams.

RECAPITULATION.—Yeas 62, nays 37, absent 5—104—the Speaker 1—whole number of Representatives 105.

Mr. DAYTON, the Speaker, in Committee of the Whole, voted against the resolution.

MARCH 25.—The committee (Messrs. LIVINGSTON and GALLATIN) appointed to present the resolution agreed to yesterday to the PRESIDENT, reported, that the PRESIDENT answered, that he would take the resolution into consideration.

MARCH 30.—The following Message was received from the PRESIDENT in answer to the resolution of the House:

*Gentlemen of the House of Representatives:*

With the utmost attention I have considered your resolution of the 24th instant, requesting me to lay before your House a copy of the instructions to the Minister of the United States, who negotiated the Treaty with the King of Great Britain, together with the correspondence and other documents relative to that Treaty, excepting such of the said papers as any existing negotiation may render improper to be disclosed.

In deliberating upon this subject, it was impossible for me to lose sight of the principle which some have avowed, in its discussion, or to avoid extending my views to the consequences which must flow from the admission of that principle.

I trust that no part of my conduct has ever indicated a disposition to withhold any information which the Constitution has enjoined upon the President, as a duty, to give, or which could be required of him by either House of Congress as a right; and, with truth, I affirm, that it has been, as it will continue to be, while I have the honor to preside in the Government, my constant endeavor to harmonize with the other branches thereof, so far as the trust delegated to me by the people of the United States, and my sense of the obligation it imposes, to "preserve, protect, and defend the Constitution," will permit.

The nature of foreign negotiations requires caution; and their success must often depend on secrecy; and even, when brought to a conclusion, a full disclosure of all the measures, demands, or eventual concessions which may have been proposed or contemplated would be extremely impolitic: for this might have a pernicious influence on future negotiations; or produce immediate inconveniences, perhaps danger and mischief, in relation to other Powers. The necessity of such caution and secrecy was one cogent reason for vesting the power of making Treaties in the President with the advice and consent of the Senate; the principle on which the body was formed confining it to a small number of members. To admit, then, a right in the House of Representatives to demand, and to have, as a matter of course, all the papers respecting a negotiation with a foreign Power, would be to establish a dangerous precedent.

It does not occur that the inspection of the papers asked for can be relative to any purpose under the cognizance of the House of Representatives, except that of an impeachment; which the resolution has not expressed. I repeat, that I have no disposition to withhold any information which the duty of my station will permit, or the public good shall require, to be disclosed;

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and, in fact, all the papers affecting the negotiation with Great Britain were laid before the Senate, when the Treaty itself was communicated for their consideration and advice.

The course which the debate has taken on the resolution of the House, leads to some observations on the mode of making Treaties under the Constitution of the United States.

Having been a member of the General Convention, and knowing the principles on which the Constitution was formed, I have ever entertained but one opinion on this subject, and from the first establishment of the Government to this moment, my conduct has exemplified that opinion, that the power of making Treaties is exclusively vested in the President, by and with the advice and consent of the Senate, provided two-thirds of the Senators present concur; and that every Treaty so made, and promulgated, thenceforward becomes the law of the land. It is thus that the Treaty-making power has been understood by foreign nations, and in all the Treaties made with them, we have declared, and they have believed, that when ratified by the President, with the advice and consent of the Senate, they become obligatory. In this construction of the Constitution every House of Representatives has heretofore acquiesced, and until the present time not a doubt or suspicion has appeared to my knowledge that this construction was not the true one. Nay, they have more than acquiesced; for until now, without controverting the obligation of such Treaties, they have made all the requisite provisions for carrying them into effect.

There is also reason to believe that this construction agrees with the opinions entertained by the State Conventions, when they were deliberating on the Constitution, especially by those who objected to it, because there was not required in Commercial Treaties the consent of two-thirds of the whole number of the members of the Senate, instead of two-thirds of the Senators present, and because, in Treaties respecting Territorial and certain other rights and claims, the concurrence of three-fourths of the whole number of the members of both Houses respectively, was not made necessary.

It is a fact, declared by the General Convention, and universally understood, that the Constitution of the United States was the result of a spirit of amity and mutual concession. And it is well known that, under this influence, the smaller States were admitted to an equal representation in the Senate, with the larger States; and that this branch of the Government was invested with great powers; for, on the equal participation of those powers, the sovereignty and political safety of the smaller States were deemed essentially to depend.

If other proofs than these, and the plain letter of the Constitution itself, be necessary to ascertain the point under consideration, they may be found in the Journals of the General Convention, which I have deposited in the office of the Department of State. In those Journals it will appear, that a proposition was made, "that no Treaty should be binding on the United States which was not ratified by a law," and that the proposition was explicitly rejected.

As, therefore, it is perfectly clear to my understanding, that the assent of the House of Representatives is not necessary to the validity of a Treaty; as the Treaty with Great Britain exhibits in itself all the objects requiring Legislative provision, and on these the papers called for can throw no light; and as it is essential to the due administration of the Government, that the boundaries fixed by the Constitution between the differ-

ent departments should be preserved—a just regard to the Constitution and to the duty of my office, under all the circumstances of this case, forbid a compliance with your request.

G. WASHINGTON.

UNITED STATES, *March 30, 1796.*

MARCH 31.—Mr. BLOUNT moved that the Message be referred to a Committee of the Whole on the state of the Union.

Mr. GILES was of opinion it had better be referred to a Committee of the Whole simply.

Mr. SEDGWICK saw no reason for such a reference. He wished gentlemen would point out the object of the motion.

Mr. THATCHER saw no good to be obtained by referring it. The House had requested the PRESIDENT to lay certain papers before them; the PRESIDENT answers, that he has none for them. Why a reference? The House asked a question; the PRESIDENT answered in the negative—for what purpose refer the answer? what would be gained by it?

Mr. BLOUNT observed, that the PRESIDENT'S Message stands upon the Journals of the House; he wished, also, that the House should state upon their Journals the reasons which influenced them to make the request. Perhaps, also, he said, a consideration of the Message might lead to some further measure proper to be adopted. He was indifferent whether it was referred to a Committee of the Whole on the State of the Union, or a Committee of the Whole, simply.

Mr. NICHOLAS remarked that it was prejudging the question to say that nothing could arise out of a consideration of the Message. The present is a crisis important in the affairs of the country, independently of the Treaty. If the Message was a proper subject of discussion, it was proper to refer it to a Committee of the Whole. He did not think a reference to the Committee of the Whole on the state of the Union proper; because the Message points to a subject differing from that referred to that Committee. The investigation at any rate could produce nothing wrong.

Mr. GILES said, that the member from North Carolina [Mr. BLOUNT] had explained the object he had in view by a reference. He preferred a reference to a Committee of the Whole independently; because the Message itself would furnish matter enough for consideration by itself. He should object to its being referred to the Committee of the Whole, who are to take into consideration the British Treaty; because he never would consent to act upon that subject till the papers deemed material to the investigation were laid upon the table. He hoped the reference to a Committee of the Whole, generally, would be agreed to. It certainly would be proper for the House to state their reasons for the call. This call had given rise to a great Constitutional question; the PRESIDENT had stated the reasons of his opinion; if the House were not convinced by them (and he owned that, for one, he was not) then it would be proper that they should present to the public their reasons for differing with him.

Mr. THATCHER argued, that the reasons of the