New Mexico were acquired by the treaty with Mexico of 1848, and other western territory from Mexico by the treaty of 1853; numerous islands have been brought within the dominion of the United States under the authority of the act of August 18, 1856, c. 164, usually designated as the Guano Islands act, re-enacted in Revised Statutes, sections 5570-5578; Alaska was ceded by Russia in 1867; Medway Island, the western end of the Hawaiian group, 1,200 miles from Honolulu, was acquired in 1867; and $50,000 was expended in efforts to make it a naval station; on the renewal of a treaty with Hawaii, November 9, 1887, Pearl Harbor was leased for a permanent naval station; by joint resolution of congress the Hawaiian islands came under the sovereignty of the United States in 1898; and on April 30, 1900, an act for the government of Hawaii was approved, by which the Hawaiian islands were given the status of an incorporated territory; on May 21, 1890, there was proclaimed by the president an agreement, concluded and signed with Germany and Great Britain for the joint administration of the Samoan islands (26 Stat., 1497); and on February 16, 1900 (31 Stat., —), there was proclaimed a convention between the United States, Germany and Great Britain, by which Germany and Great Britain renounced in favor of the United States all their rights and claims over and in respect to the island of Tutuilla and all other islands of the Samoan group east of longitude 171 degrees west of Greenwich; and, finally, the treaty with Spain, which terminated the recent war, was ratified.

PROPOSED HAWAIIAN TREATY IN 1854.

"It is worthy of remark that, beginning in the administration of President Jefferson, the acquisitions of foreign territory above referred to were largely made while that political party was in power which announced as its fundamental tenet the duty of strictly construing the constitution, and it is true to say that all shades of political opinion have admitted the power to acquire and lent their aid to its accomplishment. And the power has been asserted in instances where it has not been exercised. Thus, during the administration of President Pierce, in 1854, a draft of a treaty for the annexation of Hawaii was agreed upon, but owing to the death of the King of the Hawaiian islands was not executed. The second article of the proposed treaty provided as follows (Ex. Doc. Senate, 55th Congress, 2d sess., Report No. 681, Calendar No. 747, p. 91):

"Article II. The kingdom of the Hawaiian islands shall be incorporated into the American union as a state, enjoying the same degree of sovereignty as other states, and admitted as such as soon as it can be done in consistency with the principles and requirements of the federal constitution, to all the rights, privileges, and immunities, of a state as aforesaid, on a perfect equality with the other states of the union."

The opinion then goes on to say:

"It is insisted, however, conceding the right of the government of the United States to acquire territory, as all such territory, when acquired, becomes absolutely incorporated into the United States, every provision of the constitution which would apply under that situation is controlling in such acquired territory. This, however, is but to admit the power to acquire and immediately to deny its beneficial existence."

Reviewing this subject, the opinion insisted that the treaty-making power, while it may require, cannot incorporate territory into the United States without the consent of congress, express or implied. It says to adopt the theory that the treaty-making power cannot insert conditions in acquiring would deprive that power of a necessary attribute and would, besides, confer upon it the authority to destroy the government of the United States. Illustrations on the subject of discovery and conquest were mentioned. The opinion says:

"If the treaty-making power can absolutely, without the consent of congress, incorporate territory, and if that power may not insert conditions against incorporation, it must follow that the treaty-making power is endowed by the constitution with the most unlimited right, susceptible of destroying every other provision of the constitution; that is, it may wreck our institutions. If the proposition be true, then millions of inhabitants of alien territory, if acquired by treaty, can, without the desire or consent of the people of the United States, speaking through congress, be immediately and irrevocably incorporated into the United States and the whole structure of the government be overthrown. While thus aggrandizing the treaty-making power on the one hand, the construction at the same time minimizes it on the other, in that it strips that authority of any right to acquire territory upon any condition which would guard the people of the United States from the evil of immediate incorporation. The treaty-making power then, under this contention, instead of having the symmetrical functions which belong to it from its very nature, becomes distorted—vested with the right to destroy upon the one hand and deprived of all power to protect the government on the other.

AN INCONSISTENT POSITION.

"And, looked at from another point of view, the effect of the principle asserted is equally antagonistic, not only to the express provisions, but to the spirit of the constitution in other respects. Thus, if it be true that the treaty-making power has the authority which it asserted, what becomes of that branch of congress which is peculiarly the representative of the people of the United States, and what is left of the functions of that body under the constitution? For, although the house of representatives might be unwilling to agree to the incorporation of alien races, it would be important to prevent its accomplishment, and the express provisions conferring upon congress the power to regulate commerce, the right to raise revenue—bills for which, by the constitution, must originate in the house of representatives—and the authority to prescribe uniform naturalization laws would be in effect set at naught by the treaty-making power. And the consequent result—incorporation—would be beyond all future control of or remedy by the American people, since, at once and without hope of redress or power of change, incorporation by the treaty would have been brought about. The inconsistency of the position is at once manifest. The basis of the argument is that the treaty must be considered to have incorporated, because acquisition presupposes the exercise of judgment as to fitness for immediate incorporation. But the deduction drawn is, although the judgment exercised is against immediate incorporation and the result is plainly expressed, the conditions are void because no judgment against incorporation can be called into play."

It was next declared that if it be true that incorporation arises immediately from a treaty without the consent of congress, it must be irrevocable, and no right would exist thereafter to change it, for although it has sometimes been said that the power conferred by the constitution to "dispose" of the territory and other property of the United States authorizes the relinquishment of sovereignty over territory of the United States, this view is generally admitted only by those who claim that the constitution does not follow the flag, and the argument, therefore, is directly opposed to the theory of immediate incorporation. Reference is made to the Northwest Territory ceded by Virginia to the United States, and in which homes were allotted to the revolutionary soldiers. It was said if, therefore, the right to sell sovereignty obtained, it must be admitted that the fathers of the country intended that the power might exist to sell out the birthright of the very men who had established the freedom and unity of the country. The opinion said:

"Observe again the inconsistency of this argument. It considers, on the one hand, that so vital is the question of incorporation that no alien territory may be acquired by a cession without absolutely endowing the territory with incorporation and the inhabitants with resulting citizenship, because, under our system of government, the assumption that a territory and its inhabitants may be held by any other title than one incorporating is impossible to be thought of. And yet to avoid the evil consequences which must follow from accepting this proposition, the argument is that all citizenship of the United States is precarious and fleeting, subject to be sold at nay moment like any other property. That is to say, to protect a newly acquired people in their presumed rights, it is essential to degrade the whole body of American citizenship. * * *

"In conformity to the principles which I have admitted, it is impossible for me to say at one and the same time that territory is an integral part of the United States. * * * and yet the safeguards, privileges, rights and immunities which arise from this situation are so ephemeral in their character that by a mere act of sale they may be destroyed. And applying this reasoning to the provisions of the treaty under consideration, to me it seems indubitable that if the treaty with Spain incorporated all the territory ceded into the United States, it resulted that the millions of people to whom that treaty related were, without the consent of the American people as expressed by congress, and without any hope of relief, indissolubly made a part of our common country."

OPINIONS OF WASHINGTON AND JEFFERSON.

Reference was made to the opinions of Washington and Jefferson to show that they thought that there was no power to dispose of soveregnty over a foot of American territory. Reference was also made to the cession by North Carolina after the formation of the constitution of the territory now the state of Tennessee, and the question was propounded, Can it be supposed that it was the intention to reserve the right to sell as any other mere property the citizenship of the "dauntless mountaineers of Western North Carolina, who shed luster on the revolutionary arms at the battle of Kings Mountain?"

But, the opinion says, if the right to dispose of American citizens as property be admitted, it must follow that if the treaty-making power cannot acquire upon condition, it cannot sell subject to a condition, and, therefore, if by the will of congress it should be determined that the millions of the inhabitants of the Philippine islands should not be ultimately brought into the United States and receive the blessings of American citizenship, but should be disposed of by allowing them to establish a government of their own, the United States would be placed in a position where it could not attach any condition to the disposition, and therefore would not be able to carry out its obligations under the treaty looking to the protection of life and property and safeguarding against foreign interference. In other words, this must follow: If the United States, under the constitution, when acquiring by treaty must acquire unconditionally, it must dispose of such territory, if at all, unconditionally.

Coming to determine what constitutes incorporation, the opinion points out that all the land within the boundaries of the United States as fixed by the treaty of peace with England which ended the revolutionary war was a part of the United States; that the territories which were subsequently formed by the cessions from the states were covered with a pledge that they should forever be a part of the United States, and thus the United States was composed of one people, enjoying citizenship, with common guarantees for life, liberty, and property, although differing somewhat in their political rights, dependent upon whether they lived in a state or territory. This political entity constituted the United States.

THE LOUISIANA PURCHASE.

The opinion goes on to show that when the Louisiana purchase was made, the difficulty in the minds of Mr. Jefferson and of those connected with his administration was as to the power to incorporate into the United States, as thus composed, an alien people. It says that Mr. Jefferson thought that an amendment to the constitution was necessary for this purpose, but that the view prevailed that congress could, if it pleased, incorporate without an amendment to the constitution. It then points out that after the purchase of Louisiana, although the treaty promised incorporation into the United States, it was not done for several years, the territory, in the meantime, being governed by congress, until finally, in 1805, the incorporation into the United States resulted by conferring upon the inhabitants the same rights in the same words as those which were enjoyed by the territorial citizens within the United States at the time of the formation of the constitution. Reference was made to the treaty by which the Floridas were acquired, to show that it had the same effect. The treaty by which the war with Mexico was terminated was next alluded to, and attention was called to the fact that it not only incorporated but changed the boundaries of the United States so as to accomplish this result, and reference was made to the treaty of cession of Alaska as illustrating the same thing. Previous decisions of the court were referred to, and it was said that they all established the rule that incorporation, as a consequence of a treaty, could not arise without the express or implied assent of congress, speaking for the American people; that to hold the contrary would be to admit that the birthright of American citizens was subject to be divided at any time without their consent by bringing in millions of aliens through the action of the treaty-making power.

This branch of the subject was summarized as follows:

ASSENT OF CONGRESS NECESSARY.

"It is then, as I think, indubitably settled by the principles of the law of nations, by the nature of the government created under the constitution, by the express and implied powers conferred upon that government by the constitution, by the mode in which those powers have been executed from the beginning, and by an unbroken line of decisions of this court, first announced by Marshall and followed and lucidly expounded by Taney, that the treaty-making power cannot incorporate territory into the United States without the express or implied assent of congress; that it may insert in a treaty conditions against immediate incorporation, and that, on the other hand, when it has expressed in the treaty conditions favorable to incorporate, they will, if the treaty be not repudiated by congress, have the force of the law of the land, and therefore by the fulfillment of such conditions cause incorporation to result. It must follow, therefore, that where a treaty contains no conditions for incorporation, and, above all, where it not only has no such conditions, but expressly provides to the contrary, that incorporation does not arise until in the wisdom of congress it is deemed