

THE LOUISIANA PURCHASE.

[Written for THE CONSERVATIVE by James Denton Hancock.]

It has been customary among a class of writers in this country to treat the purchase of Louisiana by the government of the United States as a stretch of authority, warranted under the constitution only by the circumstances under which the purchase was made. As an isolated case it would matter little; but wherever it has been deemed necessary to evade or violate the constitution in order to accomplish a desirable object, the Louisiana purchase has been made an excuse and precedent for a construction of the greatest latitude. These writers seldom state wherein the purchase was of doubtful constitutionality. This has been left to the imagination; and as mere broad statements, without fact or reasons, rarely call for or receive answers, this assertion has become the belief of a large portion of the people.

I propose to consider the grounds for this assertion and belief, and their relation to the basic principle upon which our government was founded.

The constitution is chiefly a grant of powers to the general government through its various departments. In the instrument as originally adopted by the convention there are but few exceptions to the powers granted. The first ten amendments proposed by the then existing congress and submitted to the people along with the body of the constitution comprise exceptions and limitations to the powers granted in the constitution; but in all cases, whether in the body of the constitution or in the amendments, such exceptions and limitations are so clearly stated that there can be no question as to their meaning.

The general power to make laws is vested in congress; and as there is no power vested in congress to acquire territory, it is possible that this may have been the reason that the legal right for the acquisition of Louisiana may have been doubted and denied and is still doubted and denied. But there is one notable exception to this exclusive power in congress to make laws. The president with the advice of the senate is empowered to conclude treaties, "and all treaties made under the authority of the United States, shall be the supreme law of the land." The power thus granted to the president and senate is without exception or limitation either as to purpose or subject matter. So full are the powers granted to congress, subject to the limitations prescribed, that congress is not only authorized to exercise the powers granted, but to make all laws which may be necessary and proper for carrying into execution such powers. For this reason under the power to borrow money and for that purpose, a law creating a national bank was declared valid; and early in the history of the

government it was decided that in the acknowledged exercise of its powers, no department of the government could be subject to inquiry by any other department as to the motives or purposes involved in its actions. For this reason laws for the collection of protective tariffs were held valid. The supreme court decided that when such laws produced revenue, it could not inquire into the discretionary power vested in congress; otherwise that court would be allowed to usurp despotic power over all the other departments of the government.

Under the constitution, in its dealings with other countries the government of the United States possesses full national powers—the power to declare and carry on war, the power to regulate commerce and impose duties on imports, the power to own and possess territory, the power to make treaties. Even just wars sometimes eventuate in victory and conquest. Will it be supposed for a moment that in such a contingency, our government would not have power by treaty, to exact an indemnity either in land or other property for the expense and suffering incurred in the war? Would not the government have the right to accept from foreign countries territory by gift? Yet in principle such acceptance would be the same as to acquire it in any other way by treaty.

Treaties.

Like other laws, treaties are made to redress wrongs, secure benefits and prevent injuries. With Florida and the Spanish claims, Louisiana included a strip of land stretching from the Atlantic coast to and including both sides of the mouth of the Mississippi river, and thence in one vast irregular body from the west bank of the Mississippi to the Pacific coast. As in similar cases prior to the final settlement of the continent, the claims were indefinite, the boundaries unsettled, and on every side there was room for dispute and conflict. Already conflicts had taken place between border settlers on either side of an imaginary line. The commerce of the Mississippi had been made subject to annoying burdens and regulations at New Orleans, and in probable emergencies was liable to be entirely destroyed. Disputes upon those subjects threatened to be causes of war, with the devastation and destruction by which it is always accompanied. The purchase of Louisiana by treaty with France in 1803 and the subsequent purchase of Florida by treaty with Spain in 1819 gave to our country an unbroken sea coast from Nova Scotia by the Atlantic ocean to the southern coast of Florida, and thence by the gulf of Mexico to a point several hundred miles west of the Mississippi river. By these treaties our western border was extended to the Pacific ocean, and the original area of our country considerably more than doubled; and this area has now been divided into happy, populous and

prosperous states. If any law was ever framed which secured benefits and averted evils, these treaties may be considered without rivals in these respects.

Jefferson and His Cabinet.

To this treaty, however, two objections were offered; and in obedience to that quality of the human mind which compels the wise to hesitate and doubt when new departures are made, even President Jefferson, overwhelmed by the immensity of the stake at issue, was desirous that an amendment to the constitution should be proposed specially covering the objections made. His cabinet, however, were of the opinion that the treaty was in full accord with the constitution; their opinions dissolved the doubts of the president, the treaty was presented to the senate, and by that body ratified with but a few dissenting voices. In the light of history and the present wider knowledge of the scope of the constitution, it seems incredible how these doubts could have arisen. It is easily understood, however, when it is considered that the division of parties had resulted from the heated discussions growing out of the adoption of the constitution—fear and jealousy of the vast powers granted to the general government on the one side, and on the other side the desire of a government so strong and imperial as to forever prevent all the evils which had arisen under the few and limited powers granted to the late confederacy. After the adoption of the constitution, these parties took the form of those who were in favor of a strict and those who were in favor of a liberal construction. The extremes on the one side, were those who were in favor of a construction so narrow that they would have denied to the government all its legitimate powers, and on the other side those who were in favor of a construction so loose that the government would have absorbed all the reserved rights of the states and the people. They seem to have forgotten that the constitution was a written instrument and subject to the common canons of construction for such instruments—canons ordained by the simplest rules of common sense. In the midst of their conflicting quibbles they frequently forgot that the true rule for the patriotic citizen, is a strict adherence to the constitution when honestly and fairly construed by the plain rules of reason.

Objections.

The first objection to the treaty was that the power to purchase foreign territory was not contemplated by members of the convention which framed nor the citizens who adopted the constitution—in short, that they had granted no special power to purchase and annex foreign territory. The answer was obvious. How was it possible to decide how many of those who framed and