> words. It declares that all powers granted by the Constitution, are derived from the people of the United States; and may be *resumed* by them when *perverted* to their injury or oppression; and, that every power *not granted*, remains with them, and at their will; and that no right of any description can be canceled, abridged, restrained or modified by Congress, the Senate, the House of Representatives, the President, or any department, or officer of the United States. Language cannot be stronger. It guards the reserved powers against the government as a whole, and against all its departments and officers; and in every mode by which they might be impaired; showing, clearly, that the intention was to place the reserved powers beyond the possible interference and control of the government of the United States." Works of Calhoun, pp. 249-250.

Since the powers reserved to the several states were protected not only by refusal to insert in the Constitution any provision which would give to the Federal Government a negative upon such powers, but also by express limitations upon the construction of enumerated powers, and the specific reservation to the states, respectively, or to the people, of all power not delegated to the United States by the Constitution, nor prohibited by it to the states, it is difficult to understand the logic of the contention which claims for the treaty-making power a negative upon the powers reserved to the several states. A part cannot be greater than the whole; the Federal Government in its entirety cannot be subject to the fundamental limitations arising out of its nature and the conditions of its organization, and to the express limitations written into the Constitution itself, and still, at the same time, the treaty-making power—which is only one of the enumerated powers—be absolute and unlimited. The treaty-making power has no supremacy apart from the Constitution, and can have no authority outside of and beyond the fundamental and express limitations of that instrument.

CONCLUSION.

Treaties are not to be treated with levity, nor are they to be given a sanctity which shields them from inspection and rejection, if, by their terms they do that which the Constitution forbids, and destroy essential rights of the States respectively or the people.

> "I cannot conceive how it can be held that pledges made to an alien people can be treated as more sacred than is that great pledge given by every member of department of the government of the United States to support and defend the Constitution."
>
> Downes v. Bidwell, 182 U. S. 244, l. c. 344.

But in the case at bar, may we not preserve both the treaty and the rights guaranteed by the Constitution?

In the case of Compagne v. Board, 186 U. S. 380, 395, this Court said:

> ". . . the treaty was made *subject to* the enactment of such health laws as the local conditions might evoke *not paramount to them.*"

In the case of Heim v. McCall, 239 U. S. 175, 194, commenting upon the case of Patsone v. Pennsylvania, this Court said:

> "Adopting the declaration of the court below, it was said 'that the equality of rights that the treaty assures is equality only in respect of protection and security for persons and property.' And the rulin was given point by a citation of the power of the state over its wild game, which might be preserved for its own citizens. In other words, the ruling was given point *by the special power of the state over the subject-matter,*—a power which exists in the case at bar, as we have seen."

May it not in the case at bar, as in the above cases, be said that the treaty is made subject to the "*special power of the state*?" As a matter of fact, does not the treaty itself show this upon its face?

"ARTICLE VIII.

"The High Contracting Powers agree themselves to take, *or propose to their respective appropriate law-making bodies*, the necessary measures for insuring the execution of the present convention."

May this not be construed as obligating the Federal Government "to take" the necessary measures in such territory as it has, under the Constitution, the power "to take" measures for regulating the taking of wild game therein, and further obligating the Federal Government, *not "to take,"* but *"to propose"* to the "appropriate law-making bodies"—that is, the legislatures of the several states—the necessary measures for regulating the taking of wild game within the borders of the respective states wherein the states only have the power, under the Constitution, to take such measures?

The High Contracting Powers must be held to have known that the power of the Federal Government did not extend to the taking over of a trust exercised by the state in relation to the common property of its citizens, or the enactment of mere police regulations within the limits of a state; and the language of Article VIII seems to indicate that they both knew and acted upon this knowledge.

Such construction leaves both the treaty and the laws of Missouri intact and in force. It results in holding unconstitutional only an act of Congress which was not necessarily required by the treaty, and which, under the Constitution, Congress had no power to pass.

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