EXTRA SESSION OF CONGRESS POSSIBLE TO IMPOSE DUTY ON PHILIPPINE GOODS

MEANS FREE IMPORTATION OF ARCHIPELAGO'S PRODUCTS

Now That the Barrier Is Thrown Down It Is Expected There Will Be an Immediate Increase in Importations From Islands, and Sugars, Tobaccos and Hemp Be Hurried Here

CALL BUREAU, 1406 G STREET, N. W., WASHINGTON, May 27.—An extra session of Congress is possible as a result of the decisions of the Supreme Court to-day in the insular cases, though it is not considered probable by Senators and Representatives who are now here.

The effect of the decisions is to open up the ports of the United States to the free importation of all products of the Philippines until such time as Congress shall enact a law prescribing the duties to be assessed. Up to this time full Dingley duties have been collected on all imports from the Philippines. Now that that barrier has been thrown down it is expected that there will be an immediate increase in importations from the islands. Philippine sugars, tobaccos, hemp and all other goods produced in the islands will be hurried across the Pacific as fast as possible, with a view to getting them inside the tariff barrier before Congress can put the bars up again.

The effect of this will be not only to bring goods of the Philippines into direct competition with similar goods produced in the United States, which is contrary to the policy of protection, but it will result in an appreciable reduction in the revenues of the Government as well.

The general impression here to-night is that the conditions will not be so serious as to warrant the calling of an extra session.

Secretary of the Treasury Gage said he did not think it would be necessary to call Congress together. Senator Lodge also said he did not think an extra session would be necessary. It may be possible to accomplish nearly the same effect from a protective point of view by the imposition of an export duty on goods leaving the Philippines equivalent to the Dingley duties.

Money to Be Refunded.

It is impossible to form even an approximate estimate of the amount of money that the Government will have to refund to importers under to-day's decisions of the court.

"I cannot talk with any certainty about the amount of money to be refunded," said Assistant Secretary of the Treasury Spaulding to-night. "It is impossible to even estimate the amount of money that will be paid back. To get these figures it would be necessary to communicate with the various custom-houses, as the department records do not show payments of duties that have been protested. As I understand, the Government can continue to collect duties from Porto Rico under the Foraker act, but it cannot collect from the Philippines in the absence of legislation. The department has a continuing appropriation which will permit the refunding of duties improperly collected under the Dingley act where protest has been made. Unless a protest was made at the time of payment the Government will not have to refund. The whole thing is up in the air now, and I do not know how the situation stands. If any steps are to be taken to close the open door to the Philippines it is for the President to act."

CONSTITUTION, FLAG AND ISLANDS

Continued From First Page.

a foot of American territory, and all territory incorporated into the United States was taken under a pledge that it should be forever a part of the United States. He cited the Louisiana Purchase and other instances, where considerable time elapsed prior to incorporation, and summarized his views as follows:

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 expressed and implied assent of Congress, that it may assert in a treaty conditions against immediate incorporation. 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, incorporation does not arise, until, in the wisdom of Congress, it is deemed that the acquired territory has reached that state where it is proper that it should enter into and form a part of the American family.

To Be Determined by Congress.

Attention was then called to the fact that the treaty of peace expressly provided that the civil rights and political status of the inhabitants of the islands should be determined by Congress, and the conclusion was stated as follows:

The result of what has been said is that while in an international sense Porto Rico was not a foreign country it was foreign to the United States in a domestic sense, because the island had not been incorporated into the United States, but was merely appurtenant thereto as a possession. As a necessary consequence the impost in question assessed on merchandise coming from Porto Rico into the United States after the cession was within the powers of Congress, and that body was not, moreover, as to such impost, controlled by the clause requiring that imposts should be uniform throughout the United States; in other words, the provision of the constitution just referred to was not applicable to Congress in legislating for Porto Rico.

In concluding, it was said that the question when Porto Rico was to be incorporated was a political question, to be determined by the American people, speaking through Congress, and was not for the courts to determine.

Justice Gray announced his concurrence in the majority's conclusion in the Downes case and in doing so said in substance:

The civil government of the United States cannot extend immediately and of its own force over territory acquired by war. Such territory must necessarily, in the first instance, be governed by the military power, under the control of the President, as commander in chief. Civil government cannot take effect as soon as possession is acquired under military authority, or even as soon as that possession is confirmed by treaty. It can be permanent in operation only by the action of the appropriate political department of the Government, at such time and in such degree as that department may determine. There must, of necessity, be a transition period.

So long as Congress has not incorporated the territory into the United States neither military occupation nor cession by treaty makes the conquered territory domestic territory in the sense of revenue laws. But those laws concerning "foreign countries" remain applicable to the conquered territory until changed by Congress. Such was the unanimous opinion of this court, as declared by Chief Justice Taney in Fleming vs. Page, 9.

If Congress is not ready to construct a complete government of the conquered territory it may establish a temporary government, which is not subject to all the restrictions of the constitution.

Such was the effect of the act of Congress of April 12, 1900, entitled "An act temporarily to provide revenues and a civil Government for Porto Rico, and for other purposes." The system of duties temporarily established by that act during the transition period was within the authority of Congress under the constitution of the United States.

Chief Justice Fuller Dissents.

The chief dissenting opinion in the Downes case was announced by Chief Justice Fuller, Justices Harlan, Brewer and Peckham joining in the dissent. He said the majority, though widely differing in their reasoning, seemed to concur in the view that Porto Rico belongs to the United States, but nevertheless is not a part of the United States subject to the provisions of the constitution in respect to taxes. The Foraker act, under which duties were levied, erected a complete form of government for Porto Rico, with a special provision that the taxes levied in the United States on Porto Rican exports should be held as a special fund for Porto Rico's benefit. It was admitted that on its face the part of the act with reference to duties did not comply with the rule of uniformity prescribed by the constitution. The opinion continues:

The constitutional uniformity is a geographical uniformity, but it was said that Congress in attempting to levy these duties was not exercising power derived from the first clause of section 8, or restricted by it, because, in dealing with the Territories, Congress exercises unlimited powers of government, and moreover, that these duties are merely local taxes. This court, in 1820, when Marshall was Chief Justice and Washington, William Johnson, Livingston, Todd, Duvall and Story were his associates, took a different view of the power of Congress in the matter of laying and collecting taxes, duties, imposts and excises in the Territories, and its ruling in Loughborough vs. Blake, 5 Wheat. 317, has never been overruled. It is said in one of the opinions of the majority that the Chief Justice made certain assertions which have occasioned some embarrassment in other cases.

I agree that the opinion of the court delivered by him must be embarrassing in this case, for it is necessary to overrule that decision in order to reach the result herein announced.

Marshall's Views Cited.

Chief Justice Marshall in that case, in considering the provision requiring that "all duties, imposts and excises shall be uniform throughout the United States," said: "Does this term (the United States) designate the whole or any portion of the American empire? Certainly this question can admit of but one answer. It is the name given to our great republic, which is composed of States and Territories. The District of Columbia, or the territory west of the Missouri, is not less within the United States than Maryland or Pennsylvania; and it is not less necessary, on the principles of our constitution, that uniformity in the imposition of imposts, duties and excises should be observed in the one than in the other. Since, then, the power to lay and collect taxes, which includes direct taxes, is obviously co-extensive with the power to lay and collect duties, imposts and excises, and since the latter extends throughout the United States, it follows that the power to impose direct taxes also extends throughout the United States."

Of the suggestion that this statement was mere dicta Chief Justice Fuller said:

It is wholly inadmissible to reject the process of reasoning by which the Chief Justice reached and tested the soundness of his conclusion as merely obiter. * * *

The Chief Justice held the Territories as well as the District of Columbia to be part of the United States for the purpose of national taxation and repeated in effect what he had already said in McCullough vs. Maryland, 5 Wheaton, 408: "Throughout this vast republic, from the St. Croix to the Gulf of Mexico, from the Atlantic to the Pacific, revenue is to be collected and expended, armies are to be marched and supported." Continuing, he combatted the contention that these particular duties are local in their nature and said the levy is clearly a regulation of commerce and made in the exercise of national power. He added:

In any point of view the imposition of duties on commerce operates to regulate commerce, and is not a matter of local legislation, and it follows that the levy of these duties was in the exercise of the national power to do so, and subject to the requirement of geographical uniformity.

The fact that the proceeds of these duties are devoted by the act to the use of the Territory does not make national taxes local.

Nobody disputes the power of Congress to lay and collect duties geographically uniform and apply the proceeds, by a proper appropriation act, to the relief of a particular territory, but the destination of the proceeds would not change the source of the power to lay and collect. And that suggestion certainly is not strengthened when based on the diversion of duties collected from all parts of the United States to a territorial treasury before reaching the Treasury of the United States. Clause 7 of section 9 of article I provides that "No money shall be drawn from the Treasury but in consequence of appropriations made by law," and the proposition that this may be rendered inapplicable if the money is not permitted to be paid in so as to be susceptible of being drawn out is somewhat startling.

The proposition that Chief Justice Marshall had erred in his opinion and that the rule of uniformity was a limitation to the States as such was declared to be wholly unwarranted and quite a number of cases were cited in which the Supreme Court and Congress, notably by the thirteenth and fifteenth amendments to the constitution, had sustained the view that the United States meant Territories as well as States.

No Room for Arbitrary Power.

Chief Justice Fuller then advanced the proposition enunciated in Marburg vs. Madison, first Cranch, that the constitution was written in order to define and limit and keep within its restricted boundaries all persons and departments of government and was meant to leave no room for the play and action of purely personal and arbitrary power. He added:

From Marburg vs. Madison to the present day no utterance of this court has intimated a doubt that in its operation on the people by whom and for whom it was established the national Government is a Government of enumerated powers, the exercise of which is restricted to the use of means appropriate and plainly adapted by constitutional ends, and which are "not prohibited, but consist with the letter and spirit of the constitution," the powers delegated by the people to their agents are not enlarged by the expansion of th domain within which they are exercised. When the restriction on the exercise of a particular power by a particular agent is ascertained, that is an end of the question.

To hold otherwise is to overthrow the basis of our constitutional law and, moreover, in effect, to reassert the proposition that the States and not the people created the Government.

On the contention that by international law Porto Rico came to us subject to such legislation as Congress might enact Chief Justice Fuller said:

The new master was, in this instance, the United States, a constitutional government with limited powers, and the terms which the constitution, which itself imposed, or which might be imposed in accordance with the constitution, were the terms on which the new master took possession.

Power Not Disputed.

The power of the United States to acquire territory by conquest, by treaty, or by discovery and occupation is not disputed, nor is the proposition that in all international relations, interests and responsibilities the United States is a separate, independent and sovereign nation; but it does not derive its powers from international law, which, though a part of our municipal laws, is not a part of the organic law of the land. The source of national power in this country is the constitution of the United States, and the Government, as to our internal affairs, possesses no inherent sources of foreign power not derived from that instrument, and inconsistent with its letter and spirit.

Chief Justice Fuller absolutely rejected the contention that the rule of uniformity was not applicable to Porto Rico because it has not been incorporated into this or become an integral part of the United States. The word incorporation had no occult meaning, and whatever its situation before, the Foraker act made Porto Rico an organized Territory of the United States. He could not accept the view that even after organized "Congress has the power to keep it like a disembodied shade in an intermediate state of ambiguous existence for an indefinite period, and more than that, that after it had been called from that limbo commerce with it is absolutely subject to the will of Congress, irrespective of constitutional provisions."

Majority Concurring Opinion.

The concurring opinion of the majority recognizes that Congress, in dealing with the people of new Territories or possessions, is bound to respect the fundamental guarantees of life, liberty and property, but assumes that Congress is not bound in those Territories or possessions to follow the rules of taxation prescribed by the constitution. And yet the power to tax involves the power to destroy, and the levy of duties touches all our people in all places under the jurisdiction of the Government. The opinion adds:

The logical result is that Congress may prohibit commerce altogether between the States and Territories, and may prescribe one rule of taxation in one Territory and a different rule in another. That theory assumes that the constitution created a government empowered to acquire countries throughout the world, to be governed by different rules than those obtaining in the original States and Territories, and substitutes for the present system of republican government a system of domination over distant provinces in the exercise of unrestricted power.

In our judgment, so much of the Porto Rican act as authorizes the imposition of these duties is invalid, and plaintiffs were entitled to recover.

Some argument was made as to general consequences apprehended to flow from this result, but the language of the constitution is too plain and unambiguous to permit its meaning to be thus influenced. * * *

Again, it is objected on behalf of the Government that the possession of absolute power is essential to the acquisition of vast and distant territories, and that we should regard the situation as it is to-day rather than as it was a century ago. * * *

But it must be remembered that, as Marshall and Storey declared, the constitution was framed for ages to come, and that the sagacious men who framed it were well aware that a mighty future waited on their work. They may not, indeed, have deliberately considered a triumphal progress of the nation, as such, around the earth, but as Marshall wrote: "It is not enough to say that this particular case was not in the mind of the convention, when the article was framed, nor of the American people when it was adopted. It is necessary to go farther, and to say that had this particular case been suggested the language would have been so varied as to exclude it, or it would have been made a special exception."

This cannot be said, and, on the contrary, in order to permit the successful extension of our institutions, the reasonable presumption is that the limitations on the exertion of arbitrary power would have been made more rigorous.

Justice Harlan's Views.

Justice Harlan then announced his concurrence with the dissenting opinion delivered by the Chief Justice. He regarded the Foraker act as unconstitutional in its revenue provisions, and believed that Porto Rico, after the ratification of the treaty with Spain, became a part of the United States. Referring to the majority views that the power of our government with respect to new territory is the same power which other nations had been accustomed to exercise, Justice Harlan said:

I take leave to say if the principles now announced should ever receive the sanction of a majority of this court the result will be a radical and mischievous change in our system of government. We will, in that event, pass from the era of constitutional liberty, guarded and protected by a written constitution, into an era of legislative absolutism in respect of many rights that are dear to all people who love freedom.

In my opinion Congress has no existence and can exercise no authority outside of the constitution. Still less is it true that Congress can deal with new territories just as other nations have done or may do with their new territories. This nation is under the control of a written constitution, which is the supreme law of the land and the only source of the powers which our Government or any branch or officer of it may exercise at any time or at any place. Monarchial and despotic governments, unrestrained in their powers by written constitutions, may do with newly acquired territories what this Government may not do consistently with our fundamental law. The idea that this country may acquire territories anywhere upon the earth, by conquest or treaty, and hold them as mere colonies or provinces, is wholly inconsistent with the spirit and genius as well as with the words of the constitution. The glory of our American system of government is that it was created by a written constitution, which protects the people against the exercise of arbitrary, unlimited power, and the limits of which may not be passed by the Government it created, or by any branch of it, or even by the people who ordained it, except by amendment. It will be an evil day for American liberty if the theory of a government outside of the supreme law of the land finds lodgment in their constitutional jurisprudence.

Argues for Uniformity.

Justice Harlan commented on the idea that Congress could "legislate the constitution into contiguous territory." Such a view, he said, might well cause surprise, if not alarm. Congress had no existence except by virtue of the constitution. He pointed out that the majority opinion suggested that conditions might arise when the annexation of distant possessions would become desirable, so that concessions might well be made for a time, that ultimately our own theories might be carried out. But, Harlan dissented from any such theory of our governmental system. He said:

The "expanding future of our country," justifying the belief that the United States is to become what is called a "world power," of which so much was heard in the argument, does not justify any such juggling with the words of the constitution as would authorize the courts to hold that the words "throughout the United States" in the taxing clause of the constitution do not embrace a "territory of the United States."

In conclusion, Justice Harlan said:

The addition of Porto Rico to the territory of the United States has been recognized by direct action upon the part of Congress. It has legislated in recognition of the treaty with Spain. If Porto Rico did not by such action become a part of the United States it did become such at least when Congress passed the Foraker act. I cannot believe that Congress may impose any duty, impost or excise, with respect to that territory and its people, which is not consistent with the constitutional requirements that all duties, imposts and excises shall be uniform throughout the United States.

PORTO RICAN DUTIES ILLEGALLY EXACTED

Island Not a Foreign Country at the Time of Their Collection.

WASHINGTON, May 27.—The first case decided was that of Elias S. A. Delima et al., plaintiffs in error, against George R. Bidwell, Collector of the Port of New York, the case coming to the Supreme Court from the Circuit Court of the United States for the District of New

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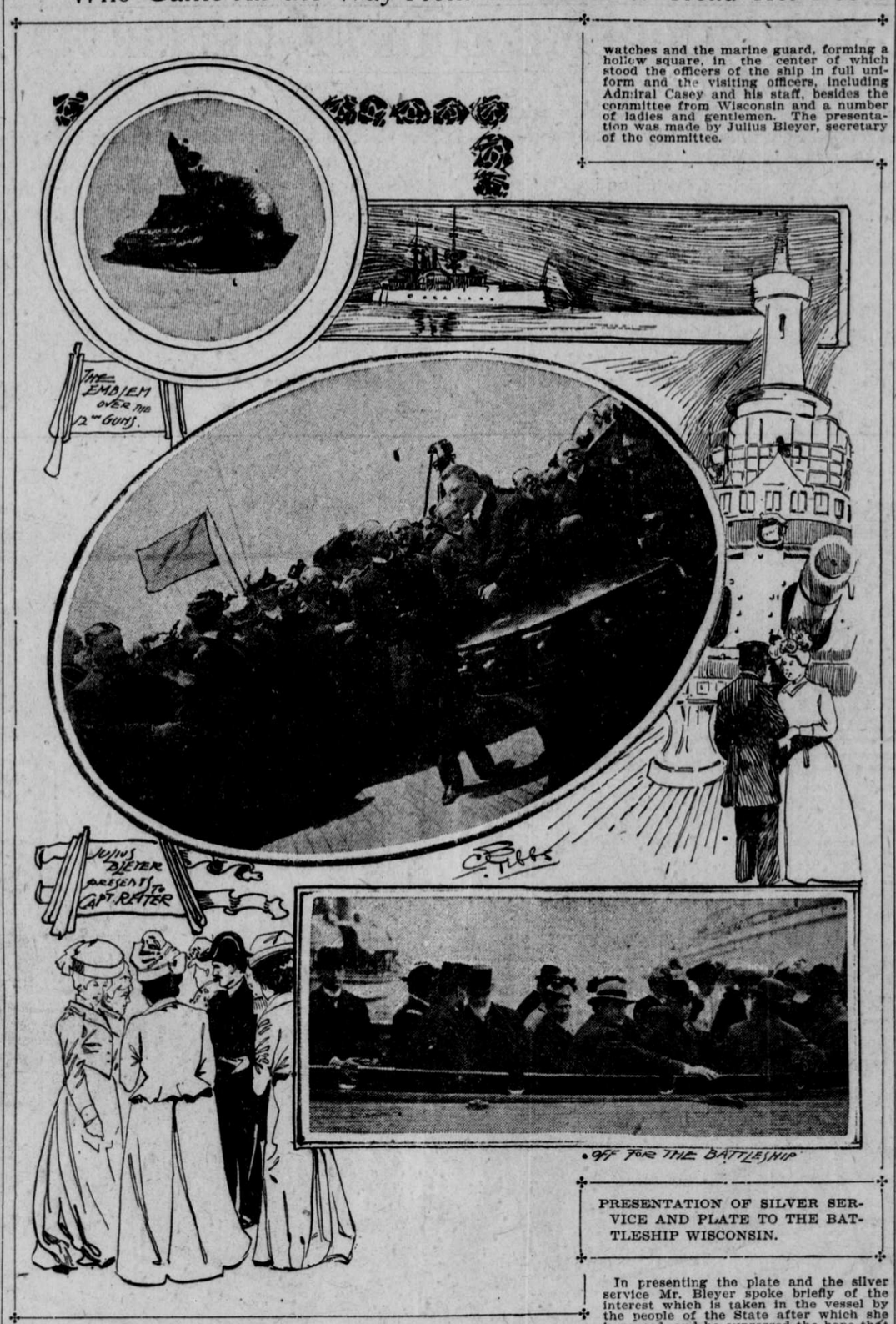
PLATE FOR WISCONSIN, THE SHIP, FROM HER NAMESAKE, THE STATE

Silver Service for Battleship's Wardroom and a Tablet for Front of Her Pilot House Presented by a Committee of Citizens Who Came All the Way From the Lakes to Tread Her Decks



watches and the marine guard, forming a hollow square, in the center of which stood the officers of the ship in full uniform and the visiting officers, including Admiral Casey and his staff, besides the committee from Wisconsin and a number of ladies and gentlemen. The presentation was made by Julius Bleyer, secretary of the committee.

PRESENTATION OF SILVER SERVICE AND PLATE TO THE BATTLESHIP WISCONSIN.

THROUGH a committee which came out from Wisconsin for the purpose the battleship Wisconsin was presented with a silver service for her wardroom and a plate of bronze for her pilot house yesterday. The ceremony of presentation took place on her forward deck in the presence of her officers and crew and two score of visitors who accompanied the committee from Wisconsin out to the warship.

The silver service consisted of punch bowls of ample proportions and the accompanying ladles and cups and trays, all beautifully engraved and all bearing the distinctive sign of the State of Wisconsin, the badger. The lithe little animal is fac-similed on handles and stands, on the cups and on the trays and wherever he can conveniently be put, and, like the bear of California, he makes a most picturesque decoration. The silver is all engraved with the legend, "From the People of Wisconsin, by Unanimous Vote of the Legislature of 1899."

The silver service, however, was not the only nor the most important presentation. There was also the plate of bronze bearing the eves alert badger for the front of the pilot house, and this, too was engraved with a legend reading "Presented by the People of Wisconsin," and with this explanatory note: "Cast from bronze recovered from the wrecks of the Spanish cruisers destroyed by the United States fleet near Santiago, Cuba, July 3, 1898."

The plate stands out in bold relief from the pilot house. It consists of a shield bearing the arms of the State of Wisconsin, the plow, emblematic of agriculture, and the anchor, emblematic of commerce, and surrounded by a wreath of laurel. Surmounting it is the figure of a badger crouched and ready for a spring, and across the face of the shield, in letters of silver, is the single word "Forward," the watchword of Wisconsin the State and hereafter to be the war cry of Wisconsin the battleship.

Drawn up on the forward deck were the watches and the marine guard, forming a hollow square, in the center of which stood the officers of the ship in full uniform and the visiting officers, including Admiral Casey and his staff, besides the committee from Wisconsin and a number of ladies and gentlemen. The presentation was made by Julius Bleyer, secretary of the committee.

In presenting the plate and the silver service Mr. Bleyer spoke briefly of the interest which is taken in the vessel by the people of the State after which she is named, and he expressed the hope that the watchword of the State would be an encouragement to the ship in her craeer on the seas. As he commenced speaking a flag that hung from the pilot house and was draped over the plate was pulled aside, disclosing the shield and badger.

In replying, Captain Reiter commented on the growing popularity and efficiency of the navy and upon the increasing interest which is being taken in the vessels. This he attributed to the practice of naming the vessels after the large cities and the States of the Union. A few years ago, he said, the navy of the United States was known in only a few of its towns, and these only along the sea coast, but now its fame had spread through the country until every village and hamlet knew of its ships and its deeds, and gloried in them. It had come to pass, he said, that the navy is really the right arm of the country.

This ended the ceremonies, and then the guests were escorted aft to the cabin and the wardroom, where they were entertained in naval style and with naval fare.

McKENNA DISSENTS IN THE DE LIMA CASE

Differs From the Easy Definition of the Majority of the Highest Tribunal on the Question as to Whether Porto Rico Is "Foreign Country" or Domestic Territory

WASHINGTON, May 27.—Justice McKenna read a dissenting opinion in the De Lima case, stating that Justices Shiras and White joined in his views. The majority, he said, proceeded on the simple proposition that to settle whether Porto Rico is "foreign country" or domestic territory is to settle the controversy in litigation in the particular case. But in his views it could not turn on so easy a definition. Between the extremes there were other relations which Porto Rico might sustain to the United States, and it could be determined that Porto Rico occupied one of these other relations and its products, hence were subject to duties.

The history of our country, said Justice McKenna, has examples of the acquisition of foreign territory—examples of what relationship territory bears to the United States authorities, executive, legislative and judicial—as to what was wise in statesmanship as well as what was legal and constitutional in withholding or extending our laws to such territory; and, finding these examples and authorities in the way, the opinion of the court attempts to answer or distinguish or overrule them.

He then cited the cases of the United States vs. Rice, and Fleming vs. Page, referred to by the majority, and said the latter attempted to reconcile them and dismissed a large part of Chief Justice Taney's decision in the Page case as dicta. He thought both cases reconcilable on the ground that they both recognized inevitable conditions. Such recognition made the Government provident and not haphazard. It left to the executive and the legislative departments that which pertains to them.

Attacks the Majority.

The opinions expressed in Fleming vs. Page that the boundaries of our country could not be enlarged or restricted by the advance or retreat of armies, and that whether duties should be levied was dependent on Congress granting authority, should be accepted as wise and considerate of the different functions of the executive, legislative and judicial departments, and of their independence. Why should they then be discarded as dicta? Justice McKenna called attention to the fact that after California's annexation our customs laws had been extended over it, and asked why was this necessary if they applied of their own force. He also controverted other historical precedents cited by the majority and then attacked the majority for asserting that without precedent it would be irresistibly impelled to the conclusion that by accession of territory that territory automatically became a part of the United States. A treaty, he said, could not have an automatic force contrary to its terms or greater than them. Whether Porto Rico was a foreign country within the meaning of the revenue laws depended on the treaty.

Justice Gray announced that he likewise dissented from the majority opinion, saying briefly that its judgment appeared to him irreconcilable with the unanimous opinion of this court in Fleming vs. Page and with the opinions of the majority of the Justices in the case to-day decided of Downes vs. Bidwell, these dissenting opinions delivered.

FORAKER ACT UPHELD BY DECISION

Continued From First Page.

ilized, are such and entitled to all the rights, privileges and immunities of citizens. If such be their status, the consequence will be extremely serious. Indeed, it is doubtful if Congress would ever assent to the annexation of territory upon the condition that its inhabitants, however foreign they may be to our habits, traditions and modes of life, shall become at once citizens of the United States. In all its treaties hitherto the treaty-making power has made special provision for this subject.

"Grave apprehensions of danger are felt by many eminent men—a fear lest an unrestrained possession of power on the part of Congress may lead to unjust and oppressive legislation, in which the natural rights of territories, or their inhabitants, may be engulfed in a centralized despotism. These fears, however, find no justification in the action of Congress in the past century, nor in the conduct of the British Parliament toward its outlying possessions since the American revolution."

Further along Justice Brown remarked: "Whatever may be finally decided by the American people as to the status of these islands and their inhabitants—whether they shall be introduced into the sisterhood of States or be permitted to form independent governments—it does not follow that in the meantime, awaiting that decision, the people are in the matter of personal rights unprotected by the provisions of our constitution and subject to the merely arbitrary control of Congress. Even if regarded as aliens they are entitled under the principles of the constitution to be protected in life, liberty and property.

"Large powers must necessarily be entrusted to Congress in dealing with these problems and we are bound to assume that they will be judiciously exercised. That these powers may be abused is possible. But the same may be said of its powers under the constitution as well as outside of it. Human wisdom has never devised a form of government so perfect that it may not be perverted to bad purposes. It is never conclusive to argue against the possession of certain powers from possible abuses of them.

"It is safe to say that if Congress should venture upon legislation manifestly dictated by selfish interests, it would receive quick rebuke at the hands of the people. Indeed, it is scarcely possible that Congress could do a greater injustice to these islands than would be involved in holding that it could not impose upon the States taxes and excises without extending the same taxes to them. Such requirements would bring them at once within our internal revenue system, including stamps, licenses, excises and all the paraphernalia of that system, and applying it to territories which have had no experience of this kind, and where it would prove an intolerable burden."

Commenting upon the virtual absence of provision in the constitution for the acquisition of territory, Justice Brown says it can only be accounted for on the ground that the framers of that instrument did not foresee the country's future possibilities in that respect.

"If," he says, "it be once conceded that we are at liberty to acquire foreign territory, a presumption arises that our power with respect to such territory is the same power which other nations have been accustomed to exercise with respect to territories acquired by them. If, in limiting the power which Congress was to exercise within the United States, it was also intended to limit it with regard to such territories as the people of the United States should thereafter acquire, such limitations should have been expressed. Instead of that we find the constitution speaking only to States, except in the territorial clause which is absolute in its terms and suggestive of no limitations upon the power of Congress in dealing with them. The States could only delegate to Congress such power as they themselves possessed and as they had no power to acquire new territory they had none to delegate in that connection. The logical inference from this is that if Congress had power to acquire new territory, which is conceded, that power was not hampered by the constitutional provisions."

In the last paragraph of his opinion, before announcing the court's opinion, Justice Brown said:

"Patriotic and intelligent men may differ widely as to the desirableness of this or that acquisition, but this is solely a political question. We can only consider this aspect of the case so far as to say that no construction of the constitution should be adopted which would prevent Congress from considering each case upon its merits, unless the language of the instrument imperatively demands it. A false step at this time might be fatal to the development of what Chief Justice Marshall called the American empire. Choice in some cases, the natural gravitation of small bodies toward large ones in others, the result of a successful war in still others, may bring about conditions which would render the annexation of distant possessions desirable. If those possessions are inhabited by alien races, differing from us in religion, customs, laws, methods of taxation and modes of thought, the administration of government and justice, according to Anglo-Saxon principles, may for a time be impossible, and the question at once arises whether large concessions ought not to be made for a time that, ultimately, our own theories may be carried out and the blessings of a free government under the constitution extended to them. We decline to hold that there is anything in the constitution to forbid such action."

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