INSULAR CASE DECISION

RIGHT TO COLLECT ON PORTO RICAN IMPORTS.

Supreme Court Holds It Was Conferred on United States by the Foraker Act.

WASHINGTON, D. C. May 27.—Justice Brown delivered the opinion of the court in the insular case of Downes vs. Collector Bidwell, of the port of New York, in which suit was brought by Downes to recover duties to the amount of $59 35, exacted and paid under protest upon certain oranges consigned to the plaintiff at New York, and brought thither from the port of San Juan, in the island of Porto Rico, during the month of November, 1900. This case involved the question whether merchandise brought into the port of New York from Porto Rico since the passage of the Foraker act is exempt from duty, notwithstanding the third section of that act, which requires the payment of "15 per cent of the duties, which are required to be levied, collected and paid upon like articles of merchandise imported from foreign countries." The Circuit Court of the United States, for the Southern District of New York sustained the Government in this position in imposing a duty. The Supreme Court affirmed the opinion of the Circuit Court, saying:

"We are of the opinion that the Island of Porto Rico is a territory appurtenant, and belonging to the United States, but not a part of the United States within the revenue clause of the Constitution; that the Foraker act is constitutional, so far as it imposes duties upon imports from such islands, and that the plaintiff cannot recover the duties exacted in the case."

The opinion of the court went into the case very fully. Justice Brown early in his opinion outlined the distinction between this case and the Delima case, which had just been decided, saying:

"In the case of Delima versus Bidwell, we hold that upon the ratification of the treaty of peace with Spain, Porto Rico ceased to be a foreign country, and that duties were no longer collectable upon merchandise brought from that island. We are now asked to hold that it became a part of the United States within that provision of the Constitution which declares that all duties, imports, and excises shall be uniform throughout the United States. If Porto Rico be a part of the United States the Foraker act, imposing duties upon its products, is unconstitutional, not only by reason of a violation of the uniformity clause, but because by section nine, 'vessels bound to or from one state cannot be obliged to enter, clear or pay duties in another.'

"The case also involves the broader question whether the revenue clauses of the Constitution extend of their own force to our newly acquired territories. The Constitution itself does not answer the question. Its solution must be found in the nature of the government created by that instrument, in the opinion of its contemporaries, in the practical construction put upon it by Congress, and in the decision of this court."

The acquisition of territory and the formation of territories was discussed, and many authorities quoted. As a result of these citations the Justice laid down the following general conclusions:

General Conclusions.

"First—That the District of Columbia and the territories are not states, within the judicial clause of the Constitution giving jurisdiction in cases between citizens of different states.

"Second—That territories are not states, within the meaning of the revised statutes, section 709, permitting writs of error from this court in cases where the validity of a state's statute is drawn in question.

"Third—That the District of Columbia and the territories are states as that word is used in treaties with foreign powers, with respect to the ownership, disposition and inheritance of property.

"Fourth—That the territories are not within the clause of the Constitution providing for the creation of a Supreme Court and such inferior courts as Congress may see fit to establish.

"Fifth—That the Constitution does not apply to foreign countries or to trials therein conducted, and that Congress may lawfully provide for such trials before consular tribunals without the intervention of a grand or petit jury.

"Sixth—That where the Constitution has been once formally extended by Congress to territories, neither Congress nor the territorial Legislature can enact laws inconsistent therewith."

In his opinion Justice Brown referred at length to the decision of Chief Justice Taney, in the Dred Scott case, and said the difficulty with the Dred Scott case was that the court refused to make a distinction between property in general and a wholly exceptional class of property. Taking up the case in hand, the Justice continued his opinion, saying:

"The practical interpretation put by Congress upon the Constitution has been long continued and uniform to the effect that the Constitution is applicable to territories acquired by purchase or conquest only when and so far as Congress shall so direct. Notwithstanding its duty to guarantee to every state in this Union a republican form of government, Congress did not hesitate in the original organization of the territory of Louisiana, Florida, the Northwest Territory and its sub-division of Ohio, Indiana, Michigan, Illinois and Wisconsin, and still more recently in the case of Alaska, to establish a form of government bearing a much greater analogy to a British crown colony than a republican state of America, and to vest the legislative power either in a Governor and Council, or a Governor and Judges to be appointed by the President.

"We are also of the opinion that power to acquire territory by treaty implies not only the power to govern such territory, but to prescribe upon what terms the United States will receive its inhabitants and what their status shall be in what Chief Justice Marshall termed the 'American empire.' There seems to be no middle ground between this position and the doctrine that if their inhabitants do not become, immediately upon annexation, citizens of the United States their children thereafter born, whether savages or civilized, are such and are entitled to all the rights, privileges and immunities of citizens. If such be their status, the consequences 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."

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 meanwhile, 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.

Must Be Entrusted to Congress.

"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 privileges 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 requirement 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 provisions 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 forsesee 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 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 provision." In the last paragraph of his decision, 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 adapted 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 the 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."

DOOLEY DECISION REVERSED.

No Duty on Imports Chargeable After Ratification of Peace Treaty.

WASHINGTON, May 27.—The Supreme Court today passed on the case of Dooley vs. the United States, being an act brought to recover duties paid under protest at San Juan on importations from New York between July 25, 1898, and May 1, 1900. The first question was whether this action, being to recover money from the United States should not have been brought in the Court of Claims, but the court held that it was properly brought before the United States District Court for Southern New York. The court said the duties were of three classes, those levied under General Miles' order extending the Spanish regulations pending further action; those prescribed by the Commander-in-Chief, the President, until the cession of the island, and third, those subsequently levied. The court said there could be no doubt as to the lawful exaction of duty under the war power. While the treaty of peace was signed December 12, 1898, it did not take effect until ratification. The ratification of the Spanish Government was superseded, but the necessity for revenue did not cease. The Government must be carried on, and there was no authority left but the military authority. The most natural method of raising revenue was by continuing the Spanish duties. General Miles, in adopting this method, was fully justified by laws of war.

The court said further:

"Different considerations apply in the date of notice of the treaty of peace, Porto Rico then ceased to be foreign country, and the right of the Collector to exact duties ceased with the exchange of ratifications, though the right to administer the government, of course, continued. From the moment the United States ceased to be foreign country with respect to Porto Rico, and until Congress acted, importations were free from levy of duty, whether from one place to the other, or vice versa. In the opinion of the court, the authority of the Commander-in-Chief ceased with the ratification of the treaty of peace, and the right to free entry of goods continued until Congress Constitutionally acted. For this reason the decision will be reversed."

Justices Gray, Shiras, White and McKenna dissented. The dissent was based on the ground that Porto Rico does not ipso facto become a part of the United States, so far as the tariff laws are concerned, the moment the treaty of peace was ratified.

The case of Armstrong vs. the United States, involving the validity of a duty assessed on goods shipped to Porto Rico during military occupation and partly before and party after ratification of this treaty, was decided on the lines of the Dooley case, the court dividing in the latter case.

HISTORY-MAKING DECISION.

Opinion of Attorney Who Argued the Delima Case.

NEW YORK, May 27.—Frederick R. Coudert, Jr., who argued the cases of Delima and Downes before the Supreme Court, said:

"This Delima decision affects only the duties collected on Porto Rican products previous to the passage of the Foraker act. We have covered the question of duties collected since the passage of that act by what is called the Downes case. This is an issue which we created to test the constitutionality of the law."

Speaking of the Delima decision, Mr. Coudert said:

"This case, I think I can say, is a history-making decision. It will have a bearing upon the position, not only of Porto Rico, but of the Philippines and Hawaii as well. It practically means that this Government can have no such thing as colonies in the sense that Great Britain has them. Every inch of territory over which the flag floats must hereafter be considered an integral part of the Union."

Charles Frederick Adams, of the law firm of Coudert Bros., who prepared the case of Delima, said:

"If the court says the Foraker act is right, then the constitutional question is against us, for Congress has the power to discriminate against ceded countries. In that act a duty of 5 per cent of the Dingley act was regarded as legal on goods shipped from Porto Rico, but in the case of Downes it was brought up as a test case, their duty being levied after the passage of the Foraker act."

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GOVERNMENT LOSES CASE

MUST RETURN DUTY CHARGED ON PORTO RICAN GOODS.

Ratification of Treaty With Spain Gave No Such Power—This Came With the Foraker Act.

WASHINGTON, May 27.—The first insular case decided today 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 York. The decision was rendered on behalf of the majority of the court by Justice Brown, the opinion being concurred in by all the Justices except Justices McKenna, Shiras and White. The decision hung upon the case coming from the State of New York involving the levying of $15,000 in duties on goods imported from Porto Rico into the United States, the collection of the duty having been sustained by the lower court. In the effect the decision was that territory acquired by the United States is a part of the United States, and not foreign territory, and that such import duties could not be levied. The decision of the lower court was reversed.

Justice Brown announced in the beginning of his decision that the court undoubtedly has jurisdiction in this case. He said the case raised the single question whether territory acquired by the United States by cessation from a foreign power remained a "foreign country" within the meaning of the tariff laws, and added:

"The question involved in this case is not whether the sugars were importable articles under the tariff laws, but whether, coming as they did from a port alleged to be domestic, they were imported from a foreign country; in other words, whether they were imported at all as that word is defined in Woodruff vs. Parham. We think the decision in the Fassett case is conclusive to the effect that if the question be whether the sugars were imported or not, such question could not be raised before the Board of General Appraisers, and that whether they were imported merchandise for the reasons given in the Fassett case that a vessel is not an importable article, or because the merchandise was not brought from a foreign country, is immaterial. In either case, the article is not imported.

"Conceding that section 3011 has been repealed, and that no remedy exists under the customs administrative act, does it follow that no action whatever will lie? If there be an admitted wrong, the courts will look far to supply an adequate remedy." The decision then goes on to say that if the position of the Government be correct, plaintiff would be without redress in cases not falling in customs administration act. "It is hardly possible," continues the decision, "that the owner could be placed in this position."

After citing numerous opinions and authorities to show that the action of the plaintiffs in error was properly brought, the court holds that "whether these cargoes of sugar were subject to duty depends solely upon the question whether Porto Rico was a foreign country at the time the sugars were shipped, since the tariff act of July 24, 1897, commonly known as the Dingley act, declares that 'there shall be levied, collected and paid upon all articles imported from foreign countries,' certain duties therein specified. A foreign country was defined by Chief Justice Marshall and Justice Storey to be exclusively within the sovereignty of a foreign nation, and without the sovereignty of the United States.

"The status of Porto Rico was this: The island had been for some months under military occupation by the United States as a conquered country, when, by the second article of the treaty of peace between the United States and Spain, signed December 10, 1898, and ratified April 11, 1899, Spain ceded to the United States the Island of Porto Rico, which has ever since remained in our possession, and has been governed and administered by us. If the case depended solely upon those facts, and the question was broadly presented whether a country which had been ceded to us, the cession accepted, possession delivered and the island occupied and administered without interference by Spain or any other power, was a foreign country or domestic territory, it would seem that there could be as little hesitation in answering this question as there would be in determining the ownership of a house deeded in fee simple to a purchaser who had accepted the deed, gone into possession, paid taxes and made improvements without let or hindrance from his vendor. But it is earnestly insisted by the Government that it never could have been the intention of Congress to admit Porto Rico into a customs union with the United States, and that while the island may be to a certain extent domestic territory, it still remains a 'foreign country' under the tariff laws until Congress has embraced it within the general revenue system."

At great length the court then discussed similar cases arising from previous acquisitions of territory by the United States, reviewing very fully former decisions of the court involving questions such as are presented in this case. The possessions in connection with which the main question involved in this case has risen are Louisiana, Florida, Texas, California, and Alaska. Each case was taken up in order and analyzed minutely. The court then presented its conclusions in the following language:

"As showing the construction put upon this question by the Legislative Department, we need only to add that section 2 of the Foraker act makes a distinction between foreign countries and Porto Rico by enacting that the same duties shall be paid upon 'all articles imported into Porto Rico from ports other than those of the United States, which are required by law to be collected upon articles imported into the United States from foreign countries.'

"From this resume of the decisions of this court the instructions of the Executive Departments and above act of Congress, it is evident that from 1803, the date of Mr. Gallatin's letter, to this present time there is not a shred of authority, except the dictum in Fleming vs. Page, for holding that a district ceded to and in the possession of the United States remains for any purpose a foreign country. Both these conditions must exist to produce a change of nationality for revenue purposes. Possession is not alone sufficient, as was held in Fleming vs. Page; nor is a treaty ceding such territory sufficient without a surrender of possession. The practice of the executive departments, thus continued for more than half a century, is entitled to great weight, and should not be disregarded nor overturned, except for cogent reasons and unless it be clear that such construction be erroneous.

"If this were presented as an original question we should be impelled irresistibly to the same conclusion.

"By article 2, section 2, of the Constitution, the President is given power, 'by and with the advice and consent of the Senate, to make treaties, provided that two-thirds of the Senators present concur,' and, by article 6, 'this Constitution and the laws of the United States, which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land.'

"It will be observed that no distinction is made as to the question of supremacy between laws and treaties, except that both are controlled by the Constitution. A law requires the assent of both houses of Congress, and except in certain specified cases the signature of the President. A treaty is negotiated and made by the President with the concurrence of two-thirds of the Senators present, but each of them is the supreme law of the land.

"One of the ordinary incidents of a treaty is the cession of territory. It is not too much to say it is the rule, rather than the exception, that a treaty of peace, following upon a war, provides for a cession of territory to the victorious party. The territory thus acquired is acquired as absolutely as if the annexation were made, as in the case of Texas and Hawaii, by an act of Congress.

Great Power of Congress.

"It follows from this that by ratification of the Treaty of Paris, Porto Rico became territory of the United States, although not an organized territory in the technical sense of the word.

"It is true Chief Justice Taney held in Scott vs. Sanford that the territorial clause of the Constitution was confined, and intended to be confined, to the territory which at that time belonged to or was claimed by the United States, and was within their boundaries as settled by that treaty with Great Britain, and was not intended to apply to territory subsequently acquired. He seemed to differ in this construction from Chief Justice Marshall, who in speaking of Florida before it became a state remarked that it continued to be a territory of the United States, governed by the territorial clause of the Constitution, but whatever be the source of this power its uninterrupted exercise by Congress for a century and the repeated declarations of this court have settled the law that the right to acquire territory involves the right to govern and dispose of it. Indeed, it is scarcely too much to say that there has not been a session of Congress since the Territory of Louisiana was purchased that that body has not enacted legislation based upon the assumed authority to govern and control the territories. It is an authority which arises not necessarily from the territorial clause of the Constitution, but from the necessities of the case and from the inability of the states to act upon the subject. Under this power Congress may deal with territory acquired by treaty; may administer its government as it does that the District of Columbia; it may organize a local territorial government; it may admit it as a state upon an equality with other states; it may sell its public lands to individual citizens, or may donate them as homesteads to actual settlers. In short, when once acquired by treaty it belongs to the United States and is subject to the disposition of Congress.

"Territory thus acquired can remain a foreign country under the tariff laws only upon one or two theories—either that the word 'foreign' applies to such countries as were foreign at the time the statute was enacted, notwithstanding any subsequent change in their condition, or that they remain foreign under the tariff laws until Congress has formally embraced them within the customs union of the states. The first theory is obviously untenable. While a statute is presumed to speak from the time of its enactment, it embraces all such persons or things as subsequently fall within its scope. Thus a statute forbidding the sale of liquors to minors applies not only to minors in existence at the time the statute was enacted, but to all who are subsequently born, and ceases to apply to such as thereafter reach their majority. So, when the Constitution of the United States declares in article I, section 10, that the states shall not do certain things, this declaration operates not only upon the thirteen original states, but upon all who subsequently become such; and when Congress places certain restrictions upon the power of a territorial legislature, such restrictions cease to operate the moment such territory is admitted as a state. By parity of reasoning, a country ceases to be foreign the instant it becomes domestic. At once, too, if Congress sees fit to cede one of its newly acquired territories (even assuming that it had the right to do so) to a foreign power, there could be no doubt that from the day of such cession and the delivery of possession such territory would become a foreign country and be reinstated as such under the tariff laws. Certainly no act of Congress would be necessary in such cases to declare that the laws of the United States had ceased to apply to it.

"The theory that a country remains foreign with respect to the tariff laws until Congress has acted by embracing it within the customs of the Union, presupposes that a country may be domestic for one purpose and foreign for another. It may undoubtedly become necessary for the adequate administration of a domestic territory to pass a special act providing the proper machinery and officers, as the President would have no authority, except under the war power, to administer it himself, but no act is necessary to make it domestic territory if once it has been ceded to the United States. We express no opinion as to whether Congress is bound to appropriate the money to pay for it. This has been much discussed by writers upon Constitutional law, but it is not necessary to consider in this case, as Congress made prompt appropriation of the money stipulated in the treaty. This theory also presupposes that territory may be held indefinitely by the United States; it may be treated in every particular except for tariff purposes as domestic territory; that laws may be enacted and enforced by officers of the United States, sent there for that purpose; that insurrections may be suppressed, wars carried on, revenues collected, taxes imposed; in short that everything may be done which a government can do within its own boundaries and yet that the territory shall remain a foreign country; that this state of things may continue for years, for a century even, but that unless Congress enacts otherwise it still remains a foreign country. To hold that this can be done as a matter of law we deem to be pure judicial legislation. We find no warrant for it in the Constitution or in the powers conferred upon this court. It is true the non-action of Congress may occasion a temporary inconvenience, but it does not follow that courts of justice are authorized to remedy it by inverting the ordinary meaning of words.

Reversed and Remanded.

"If an act of Congress be necessary to convert a foreign country into domestic territory the question at once suggests itself, what is the character of the legislation demanded for this purpose? Will an act appropriating money for its purchase be sufficient? Apparently not. Will an act appropriating the duties collected upon imports to and from such country for the benefits of its government be sufficient? Apparently not. Will acts making appropriations for its postal service for the establishment of lighthouses, for the maintenance of quarantine stations, for erecting public buildings, have that effect? Will an act establishing a complete local government but with the reservation of a right to collect duties upon commerce be adequate for that purpose? None of these, nor all together, will be sufficient if the contention of the Government be sound, since acts embracing all these provisions have been passed in connection with Porto Rico, and it is insisted that it is still a foreign country within the meaning of the tariff laws. We are unable to acquiesce in this assumption that a territory may be at the same time both foreign and domestic.

"A single further point remains to be considered:

"It is insisted that an act of Congress, passed March 2, 1900 (31 Stat., 151), applying for the benefit of Porto Rico the amount of customs revenue received on importations by the United States from Porto Rico since the evacuation of Porto Rico by the Spanish forces, October 18, 1898, to January 1, 1900, together with any further customs revenues collected on importations from Porto Rico since January 1, 1900, or shall hereafter be collected under existing law, is a recognition by Congress of the right to collect such duties as upon importations from a foreign country, and are recognition of the fact that Porto Rico continued to be a foreign country until Congress embraced it within the customs union. It may be seriously questioned this is anything more than a recognition of the fact that there were moneys in the territory not subject to existing appropriation law. Perhaps we may go further and say that so far as these duties were paid voluntarily and without protest the legality of the payment was intended to be recognised; but it can clearly have no retroactive effect as to moneys therefor paid under protest for which an action to recover back had already been brought. As the action in this case was brought March 13, 1900, 11 days before the act was passed, the right to recover the money sued for could not be taken away by a subsequent act of Congress. Plaintiff sues in assumpsit for money which the Collector has in hands, justly and equitably belonging to them. To say that Congress could by a subsequent act deprive them of the right to prosecute this action would be beyond its power. In any event it should not be interpreted so as to make it retroactive.

"We are therefore of the opinion that at the time these duties were levied Porto Rico was not a foreign country within the meaning of the tariff laws, but a territory of the United States, that the duties were illegally exacted, and that the plaintiffs are entitled to recover them back.

"The judgment of the Circuit Court for the Southern District of New York is therefore reversed and the case remanded to that court for further proceedings in consonance with this opinion."

THE CHINESE INDEMNITY.

Probable Early Settlement Regarded as an American Victory.

PEKIN, May 27.—It is probable that Great Britain's proposition limiting the indemnity to be demanded from China to 450,000,000 taels will be agreed to by the end of the week. United States Special Commissioner Rockhill thinks this may be considered an American victory.

Probable Acceptance Confirmed.

LONDON, May 28.—Wiring to the Times from Pekin yesterday evening, Dr. Morrison confirms assertions of the probable acceptance of the British indemnity proposal. He says: "The powers will agree to begin the evacuation on the issue of an imperial edict admitting that China's indebtedness is 450,000,000 taels, plus interest, and that China will willingly comply."

GERMANS IN CHINA.

They Do Not Propose to Leave—Are After Two Provinces.

NEW YORK, May 27.—Prince Oukhtomsky, president of the Russo-Chinese Bank, who is described as knowing the Chinese as having studied them, and as having lately spent four months at Pekin, is quoted at some length on the Chinese question in a St. Petersburg dispatch to the Herald. In the course of an interview he said:

"I did not see Count von Waldersee at Pekin, but every one there knew that he felt the uselessness of his position. The Kaiser thought Pekin could be taken with a battalion. So it could, but the battalion could not stop there. That is what he did not understand. He did not comprehend the tenacity and silent resisting power of the Chinese, who have the character of the Finlander and the characteristics of Turanian blood. The Chinese will never forgive, and never forget. There is no fear with them. They would not care if as many more of them were sacrificed."

"Do they hate Germans particularly?"

"No; they dislike us all about equally, and now more than ever."

"What would have been the right course to pursue?"

"Retire at once after the legations had been rescued, and treat the Chinese as barbarians, with whom we would have no more intercourse. Had that been done, Li Hung Chang and the rest of the Mandarins would have come running down after us. Instead of that, and I look upon it as a shame that Russian representatives should be in such a position, Ministers are running after Li Hung Chang, bowing, scraping and craving audiences with him."

"Should Germany not evacuate Pekin before the wet season comes on?"

"When the season commences the legations cannot remain in the city. They will have to go up to the hills. They will go with a small guard of soldiers.

"What will happen then?"

"In the recent trouble over which there were such great difficulties, only one of the legations was attacked. The probability is that the Chinese are now more angry and excited than ever, and will attack all the legations. Remember, the Chinese are very bitter, and have much right to be so. The pillaging at Pekin was something awful. Pekin was fabulously rich."

Prince Oukhtomsky said further of the situation:

"The Germans do not mean to get out of China at all. That was what everybody knew who was in Pekin. It was the common talk of every German there, and they made no attempt at concealing the object of their mission, which was to stay."

"But what do they want?"

"The provinces of Chan Tung and Chi Li, adjacent to us in Manchuria, a territory with 25,000 of Chinese inhabitants. They want Yangtse, but only for trading purposes. All this they look upon as a colony for Germany."

Troops Leave China.

WASHINGTON, May 27.—A dispatch received at the War Department from General Chaffee at Taku says that the transports Sumner and Lennox sailed today, and that all of the troops that are to leave China are off for Manila.

Considered for President.

NEW YORK, May 27.—The Mail and Express says today:

Three candidates for the presidency of the New York Central, to succeed Samuel R. Callaway, are being seriously considered by the directors. They are E. V. W. Rossiter, vice-president of the company; Edgard Van Etten, general superintendent of the Central, and E. Dickinson, general manager of the Union Pacific. W. M. H. Newman, president of the Lake Shore road, is a possible candidate, but it is said on good authority that Mr. Newman prefers to keep his own position.

M'KENNA DISSENTED

PORTO RICO AS "FOREIGN LAND" NOT ONLY QUESTION.

In His View, the Controversy Could Not Turn on So Easy a Definition.

WASHINGTON, May 27.—Justice McKenna read a dissenting opinion in the Delima 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 a "foreign country" or "domestic territory" is to settle the controversy in litigation in the particular case. But in his view 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 case of the United States vs. Rice, and Fleming vs. Page; referred to the majority, and said that the latter attempted to reconsider 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 both recognized inevitable conditions. Such recognition made government provident, and not haphazard. It left to the executive and the legislative departments that which pertains to them. 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 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 it then be discarded as dictum?

Justice McKenna called attention to the fact that after California's annexation our customs laws had been extended over it, and asked why this was 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, territory automatically became a part of the United States. The 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 today decided of Downes vs. Bidwell.

Judgments in Two Cases Reversed.

WASHINGTON, May 27. — Justice Brown, of the Supreme Court, announced that the court, following the authority of the Delima case, reversed the judgments of the court below in the cases of Goetze vs. the United States and Croasman vs. the United States, both brought here from the United States Court of the southern district of New York.

In the Goetze case a duty levied on an importation of tobacco from Porto Rico into the United States on June 6, 1899, after the ratification of the peace treaty and before the passage of the Porto Rican act was involved, and in the Croasman case the levy of a duty on an importation of liquor from Hawaii into the United States in April, 1900, after the passage of the Hawaiian annexation resolution, and before the taking effect of the act providing a government for Hawaii. In each case the Board of General Appraisers held the importation dutiable, and in each case the decision was reversed.

BRYAN FOR TILLMAN.

Thinks Latter's Row With McLaurin Will Prove Beneficial.

LINCOLN, May 27.—W. J. Bryan gave out today a statement on the resignation of Senators McLaurin and Tillman, which he says he regards as the political event of last week. Mr. Bryan says:

"It is an honorable course for the Senators to pursue and beneficial to the state. At present South Carolina virtually has no voice in the settlement of public questions as the vote of one Senator kills the vote of the other. Senator Tillman has just been re-elected and thus risks the loss of a longer term, but Senator McLaurin really sacrifices more, because he has less chance to win the primary."

Mr. Bryan added that it was hardly necessary to say that he hoped and expected to see Senator Tillman win a sweeping victory, "because he represents the man, while McLaurin represents the dollar. The vote will show whether the plutocratic idea is making any headway in the South."

Protest Against Rules of Railroad.

OTTAWA, Ont., May 27.—All the brotherhood and train service orders have joined in a protest against the amended rules of the Canadian Pacific Railway, and an appeal has been made to the railway committee of the privy council.

Dyspepsia

Is difficult digestion, due to a weakened condition of the stomach and its inability to properly churn the food; or to unhealthy condition of the gastric juice, too much or too little acid, too much or too little pepsin

Hood's Sarsaparilla relieves all the distressing symptoms of dyspepsia because it promotes the muscular action of the stomach and intestines, aids nature in the manufacture of her own digestive secretions, which are far better than any artificial pepsin, unlocks the bowels, stimulates the kidneys and tones up their mucous membranes.

So prompt is its effect in many cases that it seems to have almost a magic touch.

Begin to take it NOW.

Suffered Everything—"I was troubled with dyspepsia, suffered everything but death, could not eat without terrible distress. Since taking Hood's Sarsaparilla I eat heartily and I am well." Mrs. Eugene Murphy, Danbury, Conn.

Eat Three Times a Day—"Hood's Sarsaparilla has cured me of dyspepsia and I never felt better. Can eat three good meals every day." Fred Poehler, 437 South Penna St., Indianapolis, Ind.

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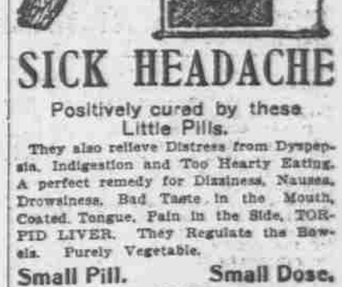

The diseases most feared are those which are inherited—handed down from generation to generation, and family to family. By far the most destructive of these is Cancer, which finds the greatest number of its victims among the children and grand-children of those whose blood was tainted with this dreadful malady. You may carry this poison in the blood for years, but as the vital powers begin to wane a slight bruise or cut, wart or mole, sore or pimple may develop into Cancer. From middle life to old age is the time when the slumbering poison is most apt to break out, a sore or ulcer often degenerating into Cancer, and Tumors become more progressive and ulcerate through the skin, the sharp, shooting pains causing the most intense suffering.

The Cancer patient naturally grows despondent as one after another the usual remedies fail, and the sore shows no sign of healing. The impurities that have been accumulating in the system, perhaps for generations, cannot be eliminated nor the poisoned blood made pure by salves, washes and plasters. The proper treatment is to purify and build up the blood, remove the cause, when the sore or ulcer heals.

S. S. S. goes directly into the blood, destroys the virus, stops the formation of Cancerous cells and cleanses the system of impurities. What we say of S. S. S. as a cure for Cancer is supported by the testimony of those who have tested it and been restored to health.

Mr. J. B. Arnold, of Greenwood, S. C., writes: "A tiny ulcer came, just under the left eye. It began spreading, and grew worse rapidly, destroying the flesh as it went. As Cancer is hereditary in my family I became thoroughly alarmed, consulting the best physicians and taking many blood medicines, none of which did me any good, when one of our leading druggists advised me to try S. S. S., and by the time I had taken the second bottle the Cancer began to show signs of healing, the discharge grew gradually less and finally ceased altogether, the sore dried up and nothing remains but a slight scar. I feel that I owe my life to S. S. S."

Begin in time, don't wait until the blood is so polluted and the system so thoroughly saturated with the poison that no medicine, however efficacious, can check the progress of the disease. If there is a taint in your blood get it out at once, don't wait for some external evidence of it, the appearance of a tumor or ulcer. We have prepared a special book on Cancer which we will mail free. Our physicians are ready to help you by their advice and such direction as your case requires. Write us fully and freely—no charge for medical advice. **THE SWIFT SPECIFIC CO., ATLANTA, GA.**

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