

'The power,' he said, 'to lay and collect duties, imposts, and excises may be exercised, and must be exercised, throughout the United States. Does this term designate the whole, or any particular portion of the American empire? Certainly this question can admit but of 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 and 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 coextensive 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.' So far as applicable to the District of Columbia, these observations are entirely sound. So far as they apply to the territories, they were not called for by the exigencies of the case.

"This case of *Loughborough vs. Blake* may be considered as establishing the principle that in dealing with foreign sovereignties the term 'United States' has a broader meaning than when used in the constitution, and includes all territories subject to the jurisdiction of the federal government, wherever located. In its treaties and conventions with foreign nations this government is a unit. This is so not because the territories comprised a part of the government established by the people of the states in their constitution, but because the federal government is the only authorized organ of the territories, as well as of the states, in their foreign relations.

CONSTITUTION IN THIS DISTRICT.

"It may be added in this connection that, to put at rest all doubts regarding the applicability of the constitution to the District of Columbia, congress by the act of February 21, 1871, specifically extended the constitution and laws of the United States to this district."

After citing many other similar cases Justice Brown says:

"Eliminating, then, from the opinions of this court all expressions unnecessary to the disposition of the particular case, and gleaned therefrom the exact point decided in each, the following propositions may be considered as established:

"1. 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.

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

"3. 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.

"4. 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.

"5. 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.

"6. That where the constitution has been once formally extended by congress to territories, neither congress nor the territorial legislature can enact laws inconsistent therewith.

APPLIES IN PART TO PORTO RICO.

"To sustain the judgment in the case under consideration it by no means becomes necessary to show that none of the articles of the constitution applies to the island of Porto Rico. There is a clear distinction between such prohibitions as go to the very root of the power of congress to act at all, irrespective of time or place, and such as are operative only 'throughout the United States' or among the several states.

"Thus, when the constitution declares that 'no bill of attainder or ex post facto law shall be passed,' and that 'no title of nobility shall be granted by the United States,' it goes to the competency of congress to pass a bill of that description. Perhaps, the same remark may apply to the first amendment, that 'congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peacefully assemble, and to petition the government for a redress of grievances.' We do not wish, however, to be understood as expressing an opinion how far the bill of rights contained in the first eight amendments is of general and how far of local application.

"In determining the meaning of the words

of Article I., section 6, 'uniform throughout the United States,' we are bound to consider not only the provisions forbidding preference being given to the ports of one state over those of another (to which attention has already been called), but the other clauses declaring that no tax or duty shall be laid on articles exported from any state, and that no state shall, without the consent of congress, lay any imposts or duties upon imports or exports, nor any duty on tonnage. The object of all of these was to protect the states which united in forming the constitution from discriminations by congress, which would operate unfairly or injuriously upon some states and not equally upon others.

ONLY AS FAR AS CONGRESS DIRECTS.

"Indeed, 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' (Art. IV., Sec. 4), by which we understand, according to the definition of Webster, 'a government in which the supreme power resides in the whole body of the people, and is exercised by representatives elected by them,' congress did not hesitate, in the original organization of the territories of Louisiana, Florida, the northwest territory, and its subdivisions 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. It was not until they had attained a certain population that power was given them to organize a legislature by a vote of the people. In all these cases, as well as in territories subsequently organized west of the Mississippi, congress thought it necessary either to extend the constitution and laws of the United States over them or to declare that the inhabitants should be entitled to enjoy the right of trial by jury, of bail, and of the privilege of the writ of habeas corpus, as well as other privileges of the bill of rights.

"We are also of opinion that the 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 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.

PROVISIONS AGAINST FORMER ALIENS.

"In all its treaties hitherto the treaty-making power has made special provision for this subject; in the cases of Louisiana and Florida, by stipulating that 'the inhabitants shall be incorporated into the union of the United States and admitted as soon as possible * * * to the enjoyment of all the rights, advantages and immunities of citizens of the United States;' in the case of Mexico, that they should 'be incorporated into the union, and be admitted at the proper time (to be judged of by the congress of the United States), to the enjoyment of all the rights of citizens of the United States;' in the case of Alaska that the inhabitants who remained three years, 'with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights,' etc.; and in the case of Porto Rico and the Philippines, 'that the civil rights and political status of the native inhabitants * * * shall be determined by congress.' In all these cases there is an implied denial of the right of the inhabitants to American citizenship until congress by further action shall signify its assent thereto.

"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. Indeed, in the only instance in which this court has declared an act of congress

unconstitutional as trespassing upon the rights of territories (the Missouri Compromise), such action was dictated by motives of humanity and justice, and so far commanded popular approval as to be embodied in the thirteenth amendment to the constitution. There are certain principles of natural justice inherent in the Anglo-Saxon character which need no expression in constitutions or statutes to give them effect or to secure dependencies against legislation manifestly hostile to their real interests. Even in the Foraker act itself, the constitutionality of which is so vigorously assailed, power was given to the legislative assembly of Porto Rico to repeal the very tariff in question in this case, a power it has not seen fit to exercise.

PROTECTION OF PERSONAL RIGHTS.

"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 government—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. This has been frequently held by this court in respect to the Chinese, even when aliens, not possessed of the political rights of citizens of the United States.

"Large powers must necessarily be intrusted 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 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.

CONSIDERED BY SENATE COMMITTEE.

"This subject was carefully considered by the senate committee in charge of the Foraker bill, which found, after an examination of the facts, that property in Porto Rico was already burdened with a private debt amounting probably to \$30,000,000; that no system of property taxation was or ever had been in force in the island, and that it probably would require two years to inaugurate one and secure returns from it; that the revenues had always been chiefly raised by duties on imports and exports, and that our internal revenue laws, if applied in that island, would prove oppressive and ruinous to many people and interests; that to undertake to collect our heavy internal revenue tax, far heavier than Spain ever imposed upon their products and vocations, would be to invite violations of the law so innumerable as to make precautions impossible, and to almost certainly alienate and destroy the friendship and good will of that people for the United States.

"In passing upon the questions involved in this and kindred cases we ought not to overlook the fact that while the constitution was intended to establish a permanent form of government for the states which should elect to take advantage of its conditions, and continue for an indefinite future, the vast possibilities of that future could never have entered the minds of its framers. The states had but recently emerged from a war with one of the most powerful nations of Europe; were disheartened by the failure of the confederacy, and were doubtful as to the feasibility of a stronger union. Their territory was confined to a narrow strip of land on the Atlantic coast from Canada to Florida, with a somewhat indefinite claim to territory beyond the Alleghenies, where their sovereignty was disputed by tribes of hostile Indians, supported, as was popularly believed, by the British, who had never formally delivered possession under the treaty of peace. The vast territory beyond the Mississippi, which formerly had been claimed by France, since 1762 had belonged to Spain, still a powerful nation, and the owner of a great part of the western hemisphere.

SINGLE CLAUSE ON TERRITORIES.

"Under these circumstances it is little wonder