

CONSTITUTION APPLIES TO PORTO RICO.

The following is the text of the decision handed down by Judge Lochren of the United States circuit court, referred to in the last issue of THE CONSERVATIVE. This decision was upon the application of Rafael Ortiz, a citizen of Porto Rico, for a writ of habeas corpus:

"Our general government was founded by the men of the revolution, who had rebelled against the arbitrary power asserted by Great Britain to govern her outlying colonies at the will of her parliament. They established this government upon the asserted theory that all just powers of government come from the consent of the governed. They founded, as described by President Lincoln in language not yet forgotten, 'a government of the people, by the people, for the people.' It will be, indeed, marvelous if it is made to appear that these men who then founded our national government so constructed it that it is capable of ruling with unlimited power a subject people who have neither guaranties to protect them nor any voice in the government. This is foreign absolutism—the worst form of tyranny.

States Alternative Position.

"If the constitution does not extend to Porto Rico and our other new acquisitions of territory, Congress has the untrammelled, absolute power to establish subject governments or make laws for such territories; it has the power to establish dependent monarchies or satrapies, state religions and even slavery.

"The argument of one of the senators referred to, that the last clause of the thirteenth amendment prevents the establishment there of slavery, is obviously lame and impotent, for if the constitution does not extend to those parts of the domain of the United States, nor limits Congress in its powers of legislation over them, by what process will this single clause of an amendment of that instrument detach itself from the skin of the parchment and alone fasten itself upon these new territories? If it be considered that this clause of the thirteenth amendment *ex-propria vigore* extends to these new territories, or limits the powers of Congress respecting them, every clause of that instrument, for the like reason, is equally potent. To say that a clause in the constitution does not extend to a territory but does limit the power of Congress in legislating for that territory, is to draw a distinction too fine to be practical.

Argument Proves Nothing.

"The argument much repeated that if the national government of the United States has not the power to deal with these new territories untrammelled by the constitution its power is less than that possessed by other governments of the civilized world is

admitted. It proves nothing. The national government of the United States is one of limited powers. In respect to its own people, in its entire domain, and, generally, except in respect to its power to deal with foreign nations, and concerning matters expressly committed to it by the constitution, its powers are much less than that possessed by other governments. No one will dispute this.

"The national government of the United States was created and its powers and jurisdiction granted and limited by the federal constitution. Its powers can only be increased by amendment of that instrument.

Power to Govern Territories.

"The power of the general government to acquire additional territory rests upon its constitutional power to make war, which may result in conquest, and its like power to make treaties, which may bring territory by cession. The power to govern such acquired territories results from the power to admit new states and to make all needful rules and regulations respecting the territory or other property belonging to the United States.

"This clause authorizes congress to legislate in respect to a territory in local as well as national matters before its admission to statehood in the Union.

Contrary to Precedents.

"The novel doctrine that the power of Congress to govern territory ceded to the United States may be conferred by a foreign sovereign, by and through the terms of the treaty of cession, and that the general government can exercise powers thus granted by a foreign sovereign independent of and in disregard of the constitution, until Congress, mayhap in the future, shall by its enactment see fit to extend the constitution over the territory, is contrary to the holding of the Supreme Court of the United States, to the effect that the general government is one of enumerated powers and can claim and exercise no power not granted to it, by the constitution, either expressly or by necessary implication.

"It is clear that the general government cannot legislate over territory where the constitution from which every power is derived does not extend. The constitution must be in force over a territory before the general government can have any authority to legislate respecting it. No foreign sovereign can invest the general government with any legislative power.

Is Part of the United States.

"It must be held that upon the cession by Spain to the United States of the island of Porto Rico that island became a part of the dominion of the United States, as much so as is Arizona or Minnesota, and that the constitution of the United States, *ex-propria vigore*, at once extended over that island, and that this

extension of the constitution gave Congress, whose every power must come from that instrument, the authority to legislate in respect to that island as a part of the United States territory. It follows that all the provisions of the constitution in respect to personal and property rights, including the right to trial by jury in criminal prosecutions, became at once, when the cession was completed, a part of the supreme law of the land."

THE NICARAGUA CANAL. Mr. C. P. Huntington, in his address before the

Chamber of Commerce of Galveston, discussed the investment feature of the Nicaragua canal. Canals, he says, are a primitive and not a modern method of transportation. As they replaced the pack animals and rude vehicles of the early part of this century so the railroads are now taking the place of canals. Railroads are cheaper, quicker, and more satisfactory in every way.

Mr. Huntington also opposes the Nicaragua canal because of the impracticability of its construction. The climatic conditions of the proposed location are such that it would mean an enormous sacrifice of life on the part of those engaged in the work.

Fifty years ago the government of the United States and the British government, by the Clayton-Bulwer treaty, guaranteed to protect private individuals in the construction of the canal. As fifty years have elapsed and no canal has been constructed it is quite evident that the proposition did not appeal to financiers as a judicious investment.

In 1860 the Suez canal was begun by private capital with little or no government protection. It shortened the route to Asia and Australia by from 4,000 to 6,000 miles. It was this fact that tempted capitalists to make the investment.

Conditions in the western hemisphere are quite different. The year the Suez canal was completed (1869), the last rail was laid for the first transcontinental railway in this country. We now have six. With these facilities for transportation across the continent it is evident that an isthmian canal would be unprofitable as a financial investment.

"It is assumed by those in favor of the canal," says Mr. Huntington, "that 4,000,000 tons will pass through it annually at a toll of \$1.55 per ton, which is about the rate now charged on the Suez canal, and that therefore, the income of the canal would be \$6,000,000. Taking the low estimate of these friends of the measure, that the canal would cost \$140,000,000, simple interest on which at 4 per cent. would be \$5,600,000; adding to this the cost of maintaining and repairing the canal and its two harbors, and of operating it, which could