

BILL OF RIGHTS SUSTAINED.

The recent decisions of the supreme court in the cases of De Lima and Downes have elicited more comments than any other decision of that court since the Dred Scott case in 1857, and these comments indicate great diversity of opinion. After a careful reading of the records, briefs, and arguments of counsel in all the insular cases (which have been published by order of congress in house document 509, fifty-sixth congress, second session) and comparing these with the opinions delivered by the several justices in the two cases decided by the court, we have come to the conclusion that Mr. Justice Brown's opinion in each case was correct. He seems to have recognized the essential distinction between those negative and self-executing provisions of the constitution which require no legislation to make them effective, and those positive provisions which delegate certain powers to be carried into execution only by means of necessary and proper laws made by congress. And it is upon this distinction that the difference between his opinions in the two cases rests.

Mr. Coudert and Justice White.

The colloquy between Mr. Coudert and Justice White, in the course of Coudert's argument, shows how this matter stands. Justice White asked the question: "How is it that they (the framers of the constitution) put no limit upon congress in the exercise of that great body of local power of taxation in a territory which you concede must be confided to congress by the constitution?"

Mr. Coudert replied that, "as a local legislature, congress is bound by the constitution of the United States as a state would be bound by its own constitution."

Justice White then put this question: "Do you say that congress is restrained by the restrictions which are found in the state constitutions, when they tax the territories locally for local purposes?"

Mr. Coudert. "Not the restraints that are found in the state constitutions, but those which are found in the federal constitution, because when congress taxes locally, acting as a local government, it is subject to the constitution (of the United States) just as a state, when it taxes, is subject to its constitution."

Justice White. "Then what is the restraint in the federal constitution, which protects the people of the territories when congress is dealing with them locally?"

Mr. Coudert. "I think the bill of rights protects them clearly."

Justice White. "What bill of rights?"

Mr. Coudert. "Amendments one to

fifteen."

Imperialist's Claims Overthrown.

Now, the decision in the De Lima case certainly goes to the full extent of Mr. Coudert's contention, and totally overthrows the claims of the Imperialists, as set forth in the Spooner bill and the second clause of Article Nine of the Treaty of Paris, so far as these relate to civil rights secured by the constitution. Hence, it is admitted by the administration that if a spurious civil government is established in the Philippines under the Spooner law, the decision in the De Lima case will certainly become effective there, and it will be impossible to impose a duty under the Dingley act. Imperialism, then, has received a coup de grace. Nor does the decision in the Downes case help them, as Mr. Bryan erroneously supposes. For that decision simply holds that congress does not derive the power to lay a tax for the support of local government in Porto Rico from clause one, section eight, article one, of the constitution, and is not bound by the limitation upon the power conferred by that clause. It does not declare or imply a power of unlimited taxation for unlimited purposes. It does not acknowledge any unlimited power in congress. It is perfectly consistent with the constitution and with the just decision in the De Lima case. The two decisions, taken together, mean that congress has power to relieve and protect, but not to oppress or enslave the population of the islands or other American citizens. This is the net result of the litigation in the insular cases so far. It is enough. It could not have been better. The only sad thing about it is, that only one man out of the nine on the bench was wise enough to bring it about. We make a distinction between the court and the joint effect of its two decisions.

Whence Comes Taxing Power?

But it will be asked "whence does congress derive the power to lay taxes within a territory for the benefit of that territory, if not from article one, section eight, of the constitution?"

In the Yankton case (101 U. S., 132) the true answer will be found. There the supreme court said:

"There have been some differences of opinion as to the particular clause of the constitution from which the power is derived, but that it exists has always been conceded."

Congress, when legislating under this authority to govern territories, acts as the agent of the whole people of the United States, including the inhabitants of that particular place, and is endowed with the authority, and no other authority, than that transmitted to it by or under the terms of the constitution. It can not confer titles of nobility or establish a religion there, as Mr. Griggs,

speaking for the administration, contended. But it can levy local taxes directly or indirectly. All the people of the Union, including Filipinos and Porto Ricans and the inhabitants of Washington City, hold life, liberty, property, and immunities under the protection of the bill of rights and the general rules which govern society; and this tenure is expressed and secured by the fifth amendment of the constitution. There is nothing in Justice Brown's opinion in the Downes case in conflict with these views. We are prepared to support his opinions in both cases as a proper exposition of the constitution, and especially of the bill of rights.

Even Senator Jones, chairman of the national democratic committee, practically supports this view. In his interview with a reporter for the Washington Post of June 18, he says:

"In my judgment the next session of congress will devote a very large portion of its time to the question upon which the next campaign will be fought. This will be the Philippine question."

"But did not the supreme court settle that question?"

"Not by any manner of means. The supreme court, if I read the decision rightly, simply said that congress would have to deal with the Philippines. As soon as congress meets it must take up the whole problem, and therein will be the opening skirmish of the campaign. Until the supreme court acted, the question was, 'does the constitution follow the flag?' The question now is, 'ought the constitution follow the flag.' If the republican majority in congress, which will be responsible for all that is done, shall by its action declare that the constitution ought not to follow the flag, I think that there will be a day of reckoning at the polls which will surprise the republican leaders."—Journal of the Knights of Labor.

ANECDOTE OF THE OTOES.

From the journal of John K. Townsend, the naturalist, who crossed the plains in 1834 with Wyeth's second expedition. The date is May 12, the place somewhere about the Kansas-Nebraska line in the neighborhood of the Blue river.

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While we were at breakfast, three Indians of the Otoe tribe came to our camp, to see and smoke with us. These were men of rather short stature, but strong and firmly built. Their countenances resemble in general expression those of the Kansas, and their dress is very similar. We are all of opinion that it is to these Indians we owe our difficulties of last night, and we have no doubt that the three missing horses are now in their possession, but as we cannot prove it upon them, and cannot