56TH CONGRESS, 1st Session. | SENATE. | REPORT No. 249.

TEMPORARY CIVIL GOVERNMENT FOR PORTO RICO.

FEBRUARY 5, 1900.—Ordered to be printed.

Mr. FORAKER, from the Committee on Pacific Islands and Porto Rico, submitted the following

REPORT.

[To accompany S. 2264, together with the views of Mr. Gallinger and Mr. Perkins.]

The Committee on Pacific Islands and Porto Rico, having had Senate bill 2264 under consideration, report as follows:

The purpose of the bill is to provide a temporary civil government for Porto Rico, to continue until the laws and ordinances now in force in that island can be revised and codified and a more permanent form of government be framed by a commission to be appointed by the President, by and with the advice and consent of the Senate, as provided in the thirty-ninth section of the bill.

The necessity for a commission of this character is manifest when it is considered that the laws and judicial systems and codes of procedure, as well as the political conditions generally, now existing in Porto Rico are so widely different from ours as to make it impossible to do such work intelligently and comprehensively without that wider and more accurate knowledge that can be obtained only by visiting the island and studying the whole situation as it there exists.

Because the legislation now under consideration is intended to stand only temporarily, the committee have sought to limit it to only such changes in existing laws and conditions as appear necessary to quickly accomplish purposes that are thought to be essential to the peace and prosperity of the island.

Generally stated, these propositions are:

1. To substitute a civil for a military government.

2. To accord to the native Porto Ricans as much participation therein as it may be for the best interests of all concerned to give them.

3. To avoid as far as possible radical changes in the laws, courts, and codes of procedure and yet make such modifications and alterations as are necessary to dispense with the most objectionable features of Spanish government and judicial administration.

4. To provide a legislative authority that can deal with all domestic subjects of legislation.

5. To extend the navigation laws of the United States to the island, and enact such tariff, internal revenue, and other provisions as are

necessary to afford a revenue for the support of the government, and to meet the expenses of such public instruction and public improvements as should be undertaken, and in this behalf authorize, to a limited extent, the raising of funds by issuing municipal and insular bonds in anticipation of revenues.

6. To retire Porto Rican coins now in circulation and substitute coins of the United States therefor.

7. To authorize and regulate the granting of public and quasi-public franchises.

With these general purposes in view the committee granted hearings to a number of persons who were familiar with the population of the island and the existing financial, industrial, political, judicial, and general governmental conditions. All this testimony has been printed and is submitted herewith. It will be found both interesting and instructive.

From this testimony so taken and from general knowledge the committee found that there are two or three small islands adjacent to Porto Rico, which are practically a part of it and should be governed with it. The most important of these is Vieques, situated about 13 miles distant from the eastern shore of Porto Rico. It is about 21 miles in length and has an average width of about 6 miles. It is inhabited and under cultivation. The other islands referred to are the same in general character, but less in both size and importance.

With the exception of these small islands, Porto Rico is a compact territory about 90 miles in length, with an average of about 35 miles in width. It has an area of about 3,500 square miles. The interior is mountainous, but most of it is under cultivation and more or less productive. It has a population of about 1,000,000 people. Of this number only about 15 to 20 per cent can read and write in any language. The great majority of the others are illiterate and very poor. All, however, seem glad to be annexed to the United States and to desire the substitution of civil for military government, and that Porto Ricans be allowed to share in its conduct and administration.

The chief products of the island are coffee, sugar, and tobacco, though cattle raising is carried on quite successfully, and tropical fruits are produced in large quantities.

The export trade, before the recent war, was chiefly with Spain and Cuba, and amounted, in the aggregate, to about $18,000,000. About two-thirds of this amount was coffee; sugar and tobacco made up the major part of the other third.

The hurricane of August 8, 1899, almost entirely destroyed the coffee plantations throughout the whole of the island.

The treaty of peace closed against Porto Rico, except on payment of high duties, the ports of both Spain and Cuba. In consequence, the present industrial condition of the island is one of general prostration. The lands are heavily mortgaged, and there is no credit in the present unstable and indefinite status of the government with which to borrow money either to pay debts or to conduct business.

The bad features of this situation are greatly augmented by the continued circulation of Porto Rican coins. "Money changing" has, in consequence, become a necessary, but very troublesome, burden on all kinds of commercial transactions.

The inhabitants have had but little experience in government. During recent years they were allowed by a restricted suffrage, based

on educational and property qualifications, to choose certain municipal officials and also four senators and twelve deputies to represent them in the Spanish Cortes, and at the beginning of the year 1898, just before the commencement of the Spanish-American war, an autonomist form of government was put into operation, under which the island was allowed a local legislature, empowered to legislate on all domestic subjects, including taxation, under which universal manhood suffrage was allowed to all over the age of 25 years for the election of all except the captain-general and judiciary, which continued appointive. (Carroll's report, p. 42.)

Only one election was held under this autonomic government, out it seems to have been satisfactorily conducted and to have had satisfactory results. The elections held prior thereto, where the suffrage was restricted, seem also to have been attended with satisfactory results.

The laws and municipal ordinances and the various codes of procedure in force when the American military occupation commenced have been so far modified, altered, or repealed by military orders as to make them nearly enough conform to American ideas as to render it unnecessary for Congress to legislate with respect to them at this time.

The local legislative authority can make such changes as may be found necessary until the work of revision to be done by the commission can be substituted for this act.

The same may be said as to the judicial system. It has been greatly simplified and made more effective and less expensive. It now fairly meets the requirements of existing conditions.

As to education, there is not, and never has been, any general system, and now there is hardly a schoolhouse in the whole country where public instruction can be given.

With the exception of the military road from San Juan to Ponce, there are practically no highways of travel, the so-called roads amounting to little more than bridle paths and being not at all sufficient for anything like a satisfactory vehicular travel.

With all these facts and considerations in mind, the bill has been framed with a view to establishing a defined local government with sufficient revenues to defray all ordinary expenses and to inaugurate a system of education, undertaking needed public improvements, providing safeguards for necessary franchises, the substitution of American for Porto Rican coins, and to bring about a restoration of prosperity by opening markets on conditions that will stimulate production and bring quick and satisfactory results.

In this behalf it provides for a continuance, for the time being, of the existing laws, as modified by military orders, and also continues the judicial system now in operation; and, to administer the government in accordance with these ideas, it provides for the appointment of a governor and an executive council and the election of a house of delegates, which, together with the executive council acting as an upper house, shall constitute a legislative assembly that shall have complete power, subject to the veto of the governor and the supervision of Congress, to legislate upon all rightful subjects of legislation.

It further provides safeguards for the granting of franchises, authorizes the anticipation of taxes and revenues by issuing bonds, provides preferential duties on dutiable articles imported into Porto Rico, from the United States and into the United States from Porto Rico, and

extends to Porto Rico the internal revenue and all other laws of the United States locally applicable, but does not so extend the Constitution of the United States.

The questions that gave the committee most concern were, first, as to whether or not the Constitution should be extended to Porto Rico; and, in the second place, what provision should be made with respect to tariff duties and internal-revenue taxes.

With respect to the first of these questions, an examination of the various acts of Congress establishing Territorial governments, commencing with the act of April 7, 1798, establishing a Territorial government for Mississippi, shows that Congress did not extend the Constitution of the United States to the Territories in any case prior to the act of September 9, 1850, by which a Territorial government was established for New Mexico.

In the act of April 7, 1798, establishing a Territorial government for Mississippi, the provision was simply that the people of Mississippi should be entitled to enjoy all and singular the rights, privileges, and advantages granted to the people of the territory of the United States northwest of the river Ohio in and by the ordinance of 1787 in as full and ample manner as the same were possessed or enjoyed by the people of the said last-mentioned territory, excluding the last article of the ordinance, which prohibited slavery.

By the act of May 7, 1800, establishing a government for the Territory of Indiana, the same provision was repeated in substantially the same language.

By the act of October 31, 1803, it was simply provided that for the government of Louisiana, until Congress should act, all military, civil, and judicial powers should be vested in such person and persons and be exercised in such manner as the President of the United States should direct "for maintaining and protecting the inhabitants of Louisiana in the free enjoyment of their liberty, property, and religion."

By the acts of March 26, 1804, March 2, 1805, and March 3, 1805, establishing and relating to government in the Territory of Orleans and district of Louisiana, certain laws of the United States, which were specifically mentioned, were put into operation in the Territory and district.

There was no extension of the Constitution of the United States or of the laws of the United States locally applicable in any of these cases, and, in the case of Louisiana, there was no participation in the local government allowed to the people of the Territory. All the officials, including the legislative authority, as well as the governor and the judges, were appointed by the President.

In the act of January 11, 1805, establishing a government for the Territory of Michigan, it was provided that the government should be similar to that provided by the ordinance of 1787, but there was no extension to the Territory of the Constitution of the United States or the laws of the United States locally applicable.

In the act of February 3, 1809, establishing a Territorial government for Illinois, the same provision was repeated in substantially the same language, except that as to the organization of a general assembly for said Territory, so much of the ordinance as related thereto should not go into effect until satisfactory evidence should be given to the governor that such was the wish of a majority of the freeholders of the Territory.

By the act of June 4, 1812, establishing a Territorial government for Missouri, the legislative authority was appointed and the Constitution of the United States and the laws of the United States locally applicable were not extended or made to apply, but in lieu thereof most of the provisions of the Constitution relating to personal rights, privileges, and immunities were specifically enacted as a part of the statute creating Territorial government.

By the act of March 3, 1817, establishing a Territorial government for Alabama, the Constitution and laws of the United States were not made applicable, but only such laws of the Territory of Mississippi, of which Alabama had been a part, should be continued in force as were locally applicable.

By the act of March 2, 1819, establishing a Territorial government for Arkansas, the legislative authority was vested in the governor and certain judges—who were appointed—and the act providing for the government of the Territory of Missouri, and certain laws of that Territory were made applicable, but the Constitution and laws of the United States locally applicable were not extended or applied.

By the act approved March 3, 1819, authorizing the President of the United States to take possession of East and West Florida, and establishing a Territorial government therein, it was provided, as in the act authorizing the President to take possession of Louisiana, that all military, civil, and judicial powers should be vested in such person and persons, and should be exercised in such manner as the President of the United States should direct, etc.

By the act of March 30, 1822, establishing a government for the Territory of Florida, the legislative power was vested in the governor and a council appointed by the President, and certain privileges, immunities, and guaranties in the Constitution were incorporated into the statute; but the Constitution of the United States and the laws thereof, locally applicable, were not extended to the Territory.

By the act of April 30, 1836, establishing a government for the Territory of Wisconsin, the Constitution of the United States was not extended to the Territory, but it was provided in the following language, used for the first time in this legislation for Territories, that—

> The laws of the United States are hereby extended over and shall be in force in said Territory, so far as the same or any provisions thereof may be applicable.

By the act of June 12, 1838, establishing a government for the Territory of Iowa, the Constitution of the United States was not extended to the Territory, but it was provided in section 12 as follows:

> That the inhabitants of the said Territory shall be entitled to all the rights, privileges, and immunities heretofore granted and secured to the Territory of Wisconsin and to its inhabitants, and the existing laws of the Territory of Wisconsin shall be extended over said Territory so far as the same be not incompatible with the provisions of this act, subject, nevertheless, to be altered, modified, or repealed by the governor and legislative assembly of said Territory of Iowa; and, further, the laws of the United States are hereby extended over and shall be in force in said Territory, so far as the same or any provisions thereof may be applicable.

By the act of August 14, 1848, establishing a government for the Territory of Oregon, it was provided in section 14 that the inhabitants of said Territory should be entitled to enjoy all and singular the rights, privileges, and advantages granted and secured to the people

of the United States northwest of the river Ohio by the ordinance of 1787—

and the laws of the United States are hereby extended over and declared to be in force in said Territory, so far as the same or any provision thereof may be applicable.

The act of March 3, 1849, establishing a government for the Territory of Minnesota, provided that the inhabitants of the Territory should be entitled to all the rights, privileges, and immunities granted and secured to the Territory of Wisconsin and its inhabitants, and that—

The laws of the United States are hereby extended over and declared to be in force in said Territory, so far as the same or any provision thereof may be applicable.

It will be observed that, as already stated, down to this time the Constitution of the United States was never by express enactment of Congress extended, in any instance, to any Territory for which the Congress established a Territorial government, and that in only a few cases had the laws of the United States locally applicable been extended.

But in the act of September 9, 1850, establishing a government for the Territory of New Mexico it was provided, for the first time in all this legislation—

That the Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within the said Territory of New Mexico as originally within the United States.

This provision was repeated in the act of September 9, 1850, for the establishing of a government for the Territory of Utah.

In one form or another it has been substantially repeated in every act establishing Territorial governments, including the act of February 21, 1871, establishing a government for the District of Columbia, where the language employed is as follows:

And the Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within the said District of Columbia as elsewhere within the United States.

This provision has never been repealed.

In the act of May 17, 1884, establishing a government for the district of Alaska, it was provided as follows:

That the general laws of the State of Oregon now in force are hereby declared to be the law in said district so far as the same may be applicable and not in conflict with the provisions of this act or the laws of the United States.

Attention is called in detail to this legislation to show that there is abundant precedent for not extending the provisions of the Constitution to territory of the United States for which Congress may be called upon to legislate. That it is within the constitutional power of Congress to either extend or withhold the Constitution in all such cases, as it may deem advisable, will appear from the authorities hereinafter cited in support of the proposition that Congress has constitutional power to legislate according to the provisions of this bill with respect to import duties, to which provisions attention is now called.

The bill as introduced provided for free trade between the United States and Porto Rico. This proposition was objected to on various grounds. It was urged that—

1. It was in violation of the policy of protection.

2. It was inimical to the interests of the United States, with which Porto Rican products would come in competition.

3. It would be a precedent that would have to be followed in other cases that might hereafter arise where the competition resulting might be still more injurious to American interests.

These were, at least, the principal objections urged before the committee. The committee carefully considered all of them, with the result that they do not regard the objections as well taken.

They do not think, for instance, that there is in the proposition any departure from the policy of protection, because that policy has always been maintained only as between the United States and the rest of the world, while within our own jurisdiction, among all our States and Territories, there has always been free trade. Now that Porto Rico has become a possession of the United States, it would be an application of the same policy to establish free trade between the two countries. It would be but treating this territory as no longer foreign, but American.

As to the second of these objections, the committee are of the opinion that there would not result any material injury, if there would be any injury at all, to any industry of the United States from the introduction into this country, free of duty, of all the products of Porto Rico, and that if there should be, there would be large compensating advantages secured in the corresponding extension of our markets and otherwise.

So far as coffee is concerned no such objection is tenable, for that is already admitted free of duty.

The only other products worthy of consideration in this connection are tobacco and sugar.

The total product of tobacco is less than 2,250,000 pounds per annum, and, therefore, not enough in quantity to affect our production, which amounts to more than 400,000,000 pounds annually, while in quality it is such as to be used almost exclusively for filler purposes, while most of our tobaccos, especially those of Connecticut and the Northwestern States are used almost altogether for wrappers and binders.

The sugar product amounts to about 60,000 tons annually, and under the impetus given by free trade with the United States would be increased in time to probably twice that amount. This sugar will come into direct competition with the cane and beet sugars of the United States, but when it is remembered that we consume about 2,000,000 tons annually and produce less than one-fifth of that amount, it seems that one of our own possessions, especially when its contribution toward making up this great deficiency is so small, might be allowed the same privileges with respect to our own market, of which it has become a part, that are accorded to the other sections of the country.

So far as the objection is concerned that what is done with respect to Porto Rico will be a precedent that must be followed in dealing with the Philippines and other islands we may acquire, the committee think it enough to say that such a result does not necessarily follow. In the opinion of the committee each case stands on its own merits, and Congress is not bound in one by what it may see fit to do in another. Its power is plenary, and it may do as it likes.

Nevertheless, the committee, although disregarding these objections, have thought it best, in view of the urgent necessity for a revenue for Porto Rico, to impose on all dutiable articles imported into Porto Rico from the United States 25 per cent of the tariff duties provided by the law of July 24, 1897, and also to impose a similar duty on all

articles dutiable under said act that may be imported from there into the United States which, together with all internal-revenue taxes that may be levied, shall be collected for the use and benefit of the treasury of Porto Rico for the support of the local government.

These revenues are given to Porto Rico, not only because the necessities of the island are immediate and very great, but for the further reason that it seems only just that the island should have the full benefit of all such duties and taxes, inasmuch as they arise on account of the island alone, and for the further reason that there is no satisfactory system of taxation or raising of revenues now in force in the island, and there will necessarily be much delay in inaugurating one.

It is thought that these provisions, together with such taxes as may be available from other sources, will promptly give substantial relief and render it unnecessary to extend direct aid from the National Treasury, as would otherwise be necessary.

It is estimated that the government of Porto Rico should have a revenue for insular purposes, in addition to all the expenses of municipal governments, amounting in the aggregate to not less than $3,000,000 annually, to be expended substantially as follows:

For the expenses of the insular government, including the salaries of all officials, the expenses of maintaining the courts, jails, alms houses, etc., about $1,000,000.

For schoolhouses and educational purposes, $1,000,000.

For the construction of roads, building bridges, etc., and other necessary public improvements, $1,000,000.

It is estimated that there will be derived from tariff duties about $2,000,000, and from internal-revenue taxes and other sources about $1,000,000.

The committee recognize that in not extending the Constitution and making it apply to Porto Rico, and especially by the provisions they report in this bill with respect to tariff duties, they raise important questions as to the constitutional power of Congress to enact such legislation. Notwithstanding all that has been said to the contrary, a majority of the committee are of the opinion that Congress has such power. It is not thought necessary to do more in this report than simply indicate the grounds upon which they hold that opinion.

Speaking for the majority of the committee, it is no longer open to question that the United States has complete sovereign power to acquire territory; that it is the political equal in that respect of any other Government.

It may acquire territory by discovery, by conquest, or by treaty. If it acquire territory in any of these ways, it follows as a necessary consequence that it has a right to govern such territory and the inhabitants thereof; and also it follows that the government so to be established by it must be such as meets the requirements of the case. If we should acquire territory populated by an intelligent, capable, and law-abiding people, to whom the right of self-government could be safely conceded, we might at once, with propriety and certainly within the scope of our constitutional power, incorporate that territory and people into the Union as an integral part of our territory, and, by making them a State, as a constituent part of the United States, and extend to them at once the Constitution and laws of the United States; but if the territory should be inhabited by a people of wholly

different character, illiterate, and unacquainted with our institutions, and incapable of exercising the rights and privileges guaranteed by the Constitution to the States of the Union, it would be competent for Congress to withhold from such people the operation of the Constitution and the laws of the United States, and, continuing to hold the territory as a mere possession of the United States, so govern the people thereof as their situation and the necessities of their case might seem to require.

In other words, the Constitution and laws of the United States do not, *ex proprio vigore*, extend to territory acquired by the United States, but only by Congressional action. And so long as Congress may see fit to withhold the operation of the Constitution from a Territory it is not bound in legislating for that Territory except by its positive prohibitions. It is not bound, for instance, to require trial by jury in criminal cases (Twitchell *v.* Commonwealth, 7 Wallace, 326), nor in civil suits at common law where the value in controversy shall exceed $20 (Walker *v.* Sawnnet, 92 U. S., 90), nor to establish the common law in substitution for the civil law where that is already in force, nor is it bound by its requirements as to the levying of taxes, duties, customs, and imposts. With respect to all these matters Congress is empowered to act as in its discretion may seem best. We understand all these propositions to be settled by authority as well as upon reason.

1. THE SOVEREIGNTY OF THE UNITED STATES IS FULL AND COMPLETE.

The Federal Government is the exclusive representative and embodiment of the entire sovereignty of the nation in its united character. (In re Neagle, 135 U. S., 84; dissenting opinion of Justice Lamar.)

2. THE POWER TO ACQUIRE, HOLD, AND GOVERN TERRITORY IS UNQUALIFIED.

The Constitution confers on the Government of the Union the power of making war and of making treaties; and it seems, consequently, to possess the power of acquiring territory either by conquest or treaty. (Story on Constitution, sec. 1287.)

The power to acquire territory * * * is derived from the treaty-making power and the power to declare and carry on war. The incidents of these powers are those of national sovereignty and belong to all independent governments. (Mormon Church case, 136 U. S., 42.)

As the General Government possesses the right to acquire territory, either by conquest or treaty, it would seem to follow as an inevitable consequence that it possesses the power to govern it. (Story on Constitution, sec. 1324.)

Chief Justice Marshall said, in Serè *v.* Pitot (6 Cranch, 336):

The power of governing and of legislating for a Territory is the inevitable consequence of the right to acquire and hold territory * * * hence we find Congress possessing and exercising the absolute and unqualified power of governing and legislating for the Territory of Orleans.

Mr. Justice Bradley said, in Mormon Church case (136 U. S., 42):

It would be absurd to hold that the United States has power to acquire territory and no power to govern it when acquired.

Mr. Justice Matthews said, in Murphy *v.* Ramsey (114 U. S., 44):

That question is, we think, no longer open to discussion. It has passed beyond the stage of controversy into final judgment. The people of the United States, as sovereign owners of the National Territories, have supreme power over them and their inhabitants.

Mr. Justice Gray said, in Shively *v.* Bowlby (152 U. S., 48):

The United States having rightfully acquired the Territories, and being the only Government which can impose laws upon them, have entire dominion and sovereignty, national and municipal, Federal and State, over all the Territories, so long as they remain in a Territorial condition.

3. THE ORGANIZATION AND GOVERNMENT OF TERRITORIES IS NOT A CONSTITUTIONAL RIGHT, BUT SOLELY A QUESTION OF EXPEDIENCY WITHIN THE DISCRETION OF CONGRESS.

In Benner *v.* Porter (9 How., p. 242) the Supreme Court said:

They (Territories) are not organized under the Constitution, nor subject to its complex distribution of the powers of government as the organic law, but are the creations exclusively of the legislative department, and subject to its supervision and control.

And again in Bank *v.* Yankton (101 U. S., 132) the court said:

All territory within the jurisdiction of the United States not included in any State must necessarily be governed by or under the authority of Congress. The Territories are but political subdivisions of the outlying dominion of the United States. Their relation to the General Government is much the same as that which counties bear to the respective States, and Congress may legislate for them as a State does for its municipal organizations.

All territorial powers are created by Congress, and all territorial acts are subject to Congressional supervision. (Talbott *v.* County, 139 U. S., 446.)

It will be observed that the power to acquire territory is not an express power of the Constitution, but is simply an inherent power of sovereignty necessarily implied from and incident to the power to make discoveries (about which nothing is said in the Constitution), and the power to make treaties, and make war, with respect to which transactions the Constitution does not confer any power, but simply designates the agencies by which the inherent powers shall be exercised.

It therefore follows:

If there were no provision on the subject Congress, representing the political department of the Government, would have absolute power over all territory outside of the States; but under the Constitution, and on authority, this power is unquestioned and plenary.

This power (of disposition and government) is vested in the Congress without limitation, and has been considered the foundation upon which the Territorial governments rest. (United States *v.* Gratiot, 14 Pet., 537.)

All territory within the jurisdiction of the United States not included in any State must necessarily be governed by or under the authority of Congress. * * * It has full and complete legislative authority over the people of the Territories and all the departments of the Territorial governments. (101 U. S., 132.)

All the functions of government being within legislative discretion, Congress may exercise them directly or indirectly through the organized local rule. (86 Fed. R., 459; 18 Wal., 319; 114 U. S., 44.)

It may legislate in accordance with the special needs of each locality, and vary its regulations to meet the conditions and circumstances of the people. (86 Fed. R., 459.)

In American Insurance Company *v.* Canter (1 Peters, 542), Chief Justice Marshall, speaking of the annexed Territory of Florida, said:

Its only rights were those stipulated in the treaty or granted by the new government.

From these authorities, and many more that might be cited, it is clear that Territories are not created, organized, or supervised under the Constitution as a constitutional right, but that they are on the contrary created, organized, and supervised by Congress by virtue of both the

inherent and constitutional power with which Congress, as the political department of the Government, is vested, to rule and regulate the Territories of the United States; and the rights, powers, privileges, and immunities granted to the inhabitants of the Territories, whatever they may be, are all given by Congress and do not flow from the Constitution beyond what Congress may declare. In other words, the provisions of the Constitution do not operate beyond the States, unless Congress shall so enact. There is no guaranty in the Constitution that a Territory shall even have a republican form of government, or that the civil and political status of the inhabitants of a Territory shall be of any particular character.

But while this power of Congress to legislate for newly acquired territory does not flow from, and is not controlled by, the Constitution as an organic law of the Territory, except when Congress so enacts, yet, as to all prohibitions of the Constitution laid upon Congress while legislating they operate for the benefit of all for whom Congress may legislate, no matter where they may be situated, and without regard to whether or not the provisions of the Constitution have been extended to them; but this is so because the Congress, in all that it does, is subject to and governed by those restraints and prohibitions. As, for instance, Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; no title of nobility shall be granted; no bill of attainder or ex post facto law shall be passed; neither shall the validity of contracts be impaired, nor shall property be taken without due process of law; nor shall the freedom of speech or of the press be abridged; nor shall slavery exist in any place subject to the jurisdiction of the United States.

These limitations are placed upon the exercise of the legislative power without regard to the place or the people for whom the legislation in a given case may be intended; and for this reason they inure to the benefit of all for whom Congress may undertake to legislate, without regard to whether the provisions of the Constitution, as such, have been expressly extended to them. It is not, therefore, a denial of any of these personal privileges, immunities, and guaranties to withhold the extension and application of the Constitution of the United States. Their enjoyment does not depend on such action. Congress can not deny them.

The case of Loughborough *v.* Blake (5 Wheaton, 317) is not, when rightly interpreted, in conflict with these propositions, but in support of them. All the questions of that case were decided in harmony with what is here contended for. The same is true as to the jury cases and the cases involving rights of citizenship that have been cited by those contending for an opposite opinion. All these cases had reference to the territory which had been made an integral part of the United States, and over which the Constitution and laws of the United States had been expressly extended.

But, however the question may stand on authority and general principles, there does not seem to be any room to doubt the power of Congress to legislate according to its own discretion with respect to Porto Rico.

In the treaty of Paris it is expressly provided—

> That the civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress.

No such clause as this has ever before been found in any treaty ceding territory to the United States. Its effect is, therefore, to be considered now for the first time. There is no ambiguity about it; neither can there be any controversy as to its effect. A treaty is a part of the supreme law of the land, made so by the Constitution itself:

> 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; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding. (Second clause, Article VI, Constitution.)

This provision does not say that all treaties made in pursuance of the Constitution, or consistently with the Constitution, but all treaties made under the authority of the United States, shall be, together with the Constitution and laws enacted in pursuance of it, the supreme law of the land. As to all matters, therefore, with which it properly deals, a treaty is an instrument of equal dignity with the Constitution itself. This provision was manifestly within the proper scope of the treaty. It can not be claimed that it was *ultra vires* the treaty-making power or for any other reason invalid. It expressly confers on Congress a right to make the inhabitants of Porto Rico citizens of the United States or withhold that quality. It may allow them to come into our country without restriction or forbid or regulate their coming, as it may like.

The committee have seen fit, by the provisions of this bill, to make them citizens of the United States, not because of any supposed constitutional compulsion, but solely because, in the opinion of the committee, having due regard to the best interests of all concerned, it is deemed wise and safe to make such a provision.

The effect of conferring citizenship on the inhabitants of Porto Rico is well stated by Judge Cooley, as editor of Story on Constitutional Law (sec. 1932), where, speaking of the Fourteenth Amendment, he says:

> The word "citizen" is employed in the law in different senses and different circumstances. As generally employed, however, it may be said to be a person owing allegiance to the government, and entitled to protection from it. Such, doubtless, is the meaning of the word here used. It therefore includes females as well as males, minors as well as adults, those who do not, as well as those who do, possess the privilege of elective franchise. This clause consequently confers the right to vote or to participate in the government upon no one.

In a note under section 1933 he further says:

> Persons brought in by the annexation of territory are not regarded as aliens, but as citizens. So it was decided in the case of Mr. Yule, chosen a member of Congress from Florida; and this ruling has been acted upon since as clearly and unquestionably correct.

In section 1934 Judge Cooley says further:

> These things are beyond question among the privileges and immunities of citizens of the States: To be protected in life and liberty by the law; to acquire, possess, and enjoy property; to contract and be contracted with under general laws; to be exempt from inequality in the burdens of government; to establish family relations under the regulations of law; to choose from those which are lawful the occupation of life; to institute and maintain actions of every kind in the courts; and to make defense against unlawful violence.

Surely the inhabitants of Porto Rico should have all these rights.

The Supreme Court said in 18 Howard, 591, that it would not undertake to enumerate the rights, privileges, and immunities that

pertain to citizenship, but those above given might be added to if a full enumeration were attempted instead of mere illustrations.

It has been suggested that corporations organized in Porto Rico will be deemed "persons" within the meaning of the fourteenth amendment, and that as such they will become citizens of the United States. It was held in the case of Paul *v.* Virginia, 8 Wallace, 168, that corporations, although "persons" in a certain sense, are not citizens within the meaning of the Constitution, and that they can not, therefore, pass from State to State as a citizen, but only on such conditions as the State to which they are foreign may see fit to prescribe. This decision has been followed by the Supreme Court in 119 U. S., 110–119; 125 U. S., 181–189, and other cases, and it is stated in Mr. Guthrie's work on the fourteenth amendment, page 58, that "they (corporations) are persons but not citizens."

But the effect of all the decisions and discussions of the subject are epitomized in the one sentence quoted above from Judge Cooley where he says that the term "citizen" means a person owing allegiance to a government and entitled to protection from it.

It was necessary to give to these people some definite status. They must be either citizens, aliens, or subjects. We have no subjects, and should not make aliens of our own. It followed that they should be made citizens, as the bill provides.

If, for any reason, the committee had thought it unwise or unsafe, they might have withheld that quality, and as it is within our discretion to make the inhabitants of Porto Rico citizens of the United States or not, so it is within the power and discretion of the Congress to make the inhabitants of the Philippines and other islands we may acquire citizens or withhold that quality from them. It is also within the power of Congress to regulate and restrict and prohibit, if thought advisable, the passing of the inhabitants of the Philippines or other islands from their country into ours, or to prevent the products of their labor from coming into unjust competition with the labor of this country. With respect to this whole matter Congress has now, since annexation, and will continue to have, complete and unquestioned power to legislate as it may see fit, and hence continue to afford the same protection heretofore given in all these particulars. It will be simply a question of policy hereafter in each case as it may arise, as it is now and has been heretofore.

It can limit or restrict its inhabitants in any other personal or public quality, privilege, or right, and may, therefore, tax them as other citizens or tax them more or tax them less than others; it may give them free markets in the United States or levy impost duties, as it may see fit; it may require them to pay internal-revenue taxes, or exempt them therefrom, as circumstances may indicate. It may do all these because all these relate to and affect and are included in their civil and political status.

The other provisions of the bill require but little comment. The propositions involved in them are not new. On the contrary, they have all been asserted, not only in theory, but in practice, repeatedly in our history.

The power to legislate for Louisiana, when that Territory was acquired, as Congress might see fit, was both asserted and exercised without regard to the wishes of the inhabitants, notwithstanding the treaty stipulation in that case guaranteed the ultimate incorporation

of Louisiana and its inhabitants into the Union as a State. Substantially the same experience has been repeated in each case of the acquisition of territory that has since occurred.

On the question of power, therefore, to enact the provisions of this bill there is nothing open to controversy. The sole question is one of expediency, what is right, what is best.

With this idea in mind it seemed wise to continue the laws and judicial system now in force, subject, as already stated, to the modifications and changes made by military orders since our occupation, and subject also to such changes as Congress, or the local legislature with the approval of Congress, may at any time see fit to make.

The powers conferred upon the governor are essentially executive and only such as are usual.

The question that gave the committee most concern was as to the legislative authority and how it should be chosen and constituted.

Various views were presented. One was that Congress alone should legislate directly and exclusively for the island.

Another view was that all legislation should be by the governor, who should simply decree what should be done, subject to the approval of the President, who, in case of approval, should promulgate the governor's decree by public proclamation.

Others thought that there should be a local legislative body, but that it should consist of but one house, and that its members should be appointed by the President.

Others have recommended that there should be a legislative body composed of two houses, both elective, and that for the election of its members there should be universal and unrestricted suffrage granted to all male inhabitants of the island, citizens of the United States, over the age of 21 years.

Still other suggestions were made. It is enough to say that the committee, after carefully considering all of them, have concluded that there should be a local legislative body provided for and that it should consist of two houses, one appointive and the other elected by a suffrage restricted to those who can read or write or who possess property.

In view of the experience the people of the island have had in voting and the satisfactory results thereof, it is thought no harm can result therefrom to the efficiency of the government sought to be established and that on some accounts important advantages are to be secured. The people will be thereby given a participation in the government, which will attach them to it and interest them in its success, and, in the second place, it will excite a desire to acquire property and an education in order that the right of suffrage may be enjoyed.

It should be added that the best and quickest way to qualify a people for self-government is to as far as possible give it participation and responsibility with respect thereto. By the exercise of even a very restricted suffrage the people of Porto Rico will become familiar with the duties and rights of citizenship that are associated with the ballot, in the intelligent and patriotic use of which resides the surest safeguard of popular government and free institutions. It is one of the highest obligations to give the people of Porto Rico every opportunity to fit themselves as rapidly as possible for their complete self-government.

The bill authorizes the election of a Delegate to the House of Rep-

resentatives, who shall be allowed a seat but not a vote in that body, to be paid the same salary and be allowed the same rights provided by law for a Territorial Delegate.

This provision has met with some objection, but it is thought to be as important to the United States as to Porto Rico, and it is certainly a modest representation for 1,000,000 people, who were allowed by Spain 4 senators and 12 deputies in the Cortes.

It is not thought necessary to speak in this report of other features or details of the bill or of the various amendments recommended by the committee. It will be observed that they are only intended to make more plain and effective the principal provisions of the measure.

VIEWS OF MR. GALLINGER AND MR. PERKINS.

While cordially assenting to the main features of the report, the undersigned beg to take exception to the conclusions reached in reference to duties upon the products of Porto Rico, and are also constrained to dissent from the findings of the report in regard to the objections urged against free trade. It is said that "they [the committee] do not regard the objections as well taken," while we believe that the objections, as presented to the committee and stated in the report, are absolutely sound.

If Porto Rico is in fact, without legislation, an integral part of the United States, it would be idle to undertake to make a tariff for the island different from that which applies to the States and Territories of the American Union, as the provisions of the Constitution prevent that. Assuming, then, that Porto Rico is not now in fact an integral part of the United States, but rather a colony or dependency, which is the only ground upon which the committee can find justification for not extending the provisions of the Constitution to the island, it necessarily follows that any tariff, high or low, that Congress might impose would be constitutional, and it also follows that the establishment of free trade between Porto Rico and the United States would be violative of the policy of protection.

As to whether or not the interests of the United States would seriously suffer from the free admission of Porto Rican products into our ports is, at best, a matter of opinion. That growers of American tobacco, sugar, and citrous and semitropical fruits are seriously disturbed over the proposition is undeniable. They believe that under improved methods of cultivation the production of sugar, tobacco, and citrous fruits will be immensely increased in Porto Rico, and it is also argued with much force that if free trade should be given to Porto Rico there would be an immediate and powerful demand made for free trade with Cuba, which would, if conceded, be very disastrous to American interests. As to the possibility of Porto Rico increasing her products, it should be kept in mind that a special agent of the Treasury Department who recently investigated the matter gave it as his opinion that Porto Rico can increase her production of sugar 100 per cent.

It should also be kept in mind that the labor conditions in Porto Rico and the United States are entirely different. According to testimony given before the committee by native Porto Ricans, it was admitted that the wages paid there for farm labor did not exceed 30 cents per day, which means that if free trade should be established between Porto Rico and the United States American farm laborers would necessarily to some extent come in competition with the cheap labor of the island, and that later on the same competition would have to be met between labor conditions in the Philippine Islands and this

country. Desiring to protect, as far as possible, the American laborer against the cheap labor of tropical and semitropical countries, we are alarmed at the present situation, and see no escape from the conclusion that the admission into our ports of the products of the soil of tropical countries free of duty would necessarily and inevitably have an injurious and lasting effect upon the interests of the farm laborers of the United States.

The other objection that the committee adverts to was that free trade with Porto Rico "would be a precedent that would have to be followed in other cases that might hereafter arise, where the competition resulting would be still more injurious to American interests." To this objection the answer is made in the report that—

> The committee think it enough to say that such a result does not necessarily follow. In the opinion of the committee each case stands on its own merit, and Congress is not bound in one by what it may see fit to do in another. Its power is plenary, and it may do as it likes.

Admitting that Congress could constitutionally give free trade to Porto Rico and impose duties upon the products of the Philippine Islands, surely no one can believe that Congress would so legislate. Free trade with Porto Rico means free trade with the Philippines, and we can not regard with indifference an economic condition that would strike a harmful, if not a deadly, blow to the successful cultivation of tobacco, sugar, and citrous fruits in the United States.

Our contention has been that a considerably higher rate of duty than 25 per cent ought to be imposed on Porto Rican products. Under the reciprocity clause of the McKinley tariff law 80 per cent was imposed, and yet our trade with Porto Rico, especially in breadstuffs, was enormously increased. With a tariff of 25 per cent doubtless the Porto Rican market will be opened more widely to our exports, but at the same time it will, in our judgment, result in the importation to this country of practically all that Porto Rico will have to sell, and our apprehension is that the competition with certain of our agricultural products, notably tobacco, sugar, and citrous fruits, will be so acute as to greatly more than counterbalance the benefits that will come to certain other American interests, and especially will this condition become serious if, as we have reason to suppose, the same rates of duty will later on be imposed on the products of the Philippine Islands as on those of Porto Rico. However, as the amended bill concedes the right of this Government to impose tariff duties upon the products of Porto Rico, thus recognizing and preserving the principle of protection, we are hopeful that Congress may, in its wisdom, further amend the bill by increasing the rates to a point that will adequately protect the interests of the farmers of the United States.

J. H. GALLINGER.
GEO. C. PERKINS.

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