under a just God cannot long retain it."

Nor would we pause without one other word. Gen. Grant—there is but one Gen. Grant whose voice we need heed nowadays—in the centennial year of 1875 made one of his little, but great speeches. It was made that year at Des Moines, Ia. In it he said: "Now, in this centennial year of our existence, I believe it a good time to begin to strengthen the foundations of the house commenced by our fathers 100 years ago at Concord and Lexington. Let us all labor to add all needful guarantees for the more perfect security of free thought, free speech and free press, of pure minds, unfettered religious sentiments, and of equal rights and privileges to all men, irrespective of nationality, color or religion."

Mighty words those!

Is there anything from first to last in our onslaught upon the inhabitants of the Philippine islands that tends to "strengthen the foundations of the house," to encourage "free thought, free speech and free press," or to promote "equal rights and privileges to all men irrespective of nationality, color or religion?" Will the son of the Gen. Grant, who so spoke, please ponder and answer.

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NEWS

President McKinley's colonial policy has been sustained by the supreme court of the United States. The decision was rendered on the 27th, in one of the Puerto Rico cases (see vol. iii., pp. 132, 152, 501, 578, 132, 162, 488, 501, 578, 628, 633, 641, 643, 647), which were argued last winter; and it definitely holds that the constitutional limitations upon the imposition of tariff duties do not control congress when legislating with reference to any part of the United States which is not a sovereign state in the union. This decision of the court was made by a majority of one judge. Those who held in that way were Justices Brown (republican), of Michigan, Gray (republican), of Massachusetts, Shiras (republican), of Pennsylvania, White (democrat), of Louisiana, and McKenna (republican), of California. The dissenting judges were Chief Justice Fuller (democrat), of Illinois, and Justices Harlan (republican), of Kentucky, Brewer (republican), of Kansas, and Peckham (democrat), of New York.

The true nature of this decision was not understood when the first news of the action of the court went over the wires. That news seemed to indicate clearly that the court had condemned the whole colonial policy by holding that immediately upon the ratification of the Spanish treaty Puerto Rico ceased to be foreign territory and became part of the United States. Further news was for a time confusing. It has since transpired that even the lawyers who were in the court, listening to the decisions as they were rendered, were perplexed. The explanation is that two of the decisions are in apparent conflict. One of them holds that the Dingley tariff did not apply to Puerto Rico after the treaty, because the Dingley tariff is a tariff on imports from foreign countries and immediately upon ratification of the treaty Puerto Rico ceased to be a foreign country. The other holds that congress may apply any tariff to Puerto Rico that it pleases, because, though Puerto Rico is not a foreign country, neither is it United States territory. The principal opinion in each of these apparently conflicting decisions was rendered by Justice Brown.

The former of the two cases is known as "the De Lima case." Duties under the Dingley tariff act had been levied on goods imported from Puerto Rico into the United States after the treaty with Spain, but before the Foraker act for the creation of a Puerto Rican government (see vol. iii., 9, 11, pp. 17, 21, 26, 27, 28, 35, 49, 57, 59, 268); and the importers, having paid these duties under protest, brought this suit to recover them, on the ground that Puerto Rico is not a foreign country. The government maintained, on the contrary, that the island was a foreign country for tariff purposes and must so remain until congress admits it into the American customs union. In this contention the government was defeated in this particular case. Justice Brown wrote the opinion of the court. In his opinion he rejected the government's theory, saying it "presupposes that a country may be domestic for one purpose and foreign for another;" that "territory may be held indefinitely by the United States; that 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 may still remain a foreign country; that this state of things may continue for years, for a century even, but that until congress enacts otherwise it still remains a foreign country." Concluding that it would be "pure judicial legislation" to hold that this can be so, Justice Brown announced the decision of the court in these terms:

> **We are, therefore, of the opinion that at the time these duties were levied Puerto 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.**

In that decision, Justice Brown was supported by Chief Justice Fuller, and by Justices Harlan, Brewer and Peckham. Justices McKenna, Shiras, White and Gray dissented. The objections of the first three dissenters, as stated by Justice McKenna, rested upon the proposition that the court is not driven to decide that Puerto Rico is either foreign or domestic territory; that a middle ground is open to it, and it may hold Puerto Rico to bear a relation to the United States as acquired territory which would justify the tariff duties involved in the case; but Justice Gray rested his dissent briefly upon a judicial precedent which he cited, and also upon a decision of the court agreed to by a majority of the justices and yet to be delivered.

The decision to which Justice Gray referred as yet to be delivered was made on the same day, soon after the decision in the "De Lima case." The case in which it was made is known as "the Downes case." In this case Justice Brown came over to the minority of the previous case, thereby raising it to the level of a majority, and apparently, and as some of the judges themselves said, reversing his previous decision. He also wrote the leading opinion in the second case. The second case, "the Downes case," was likewise to recover tariff duties

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paid under protest upon imports from Puerto Rico. But in this instance the duties had been imposed under the Foraker act mentioned above—the Puerto Rico government act. The constitutionality of that act was involved; because the act imposes different tariff duties on trade between Puerto Rico and the states from those which are imposed on trade between the states and foreign countries, whereas the constitution requires that "all duties, imposts and excises shall be uniform throughout the United States." The constitutional point depended, therefore, upon whether Puerto Rico is or is not part of the United States within the meaning of that requirement. Justice Brown, in delivering the leading opinion of the court, holds that it is not, saying:

We are of opinion that the island of Puerto 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 island, and that the plaintiff cannot recover back the duties exacted in this case.

In explanation of the apparent discrepancy between his opinion in "the De Lima case" and his opinion in "the Downes case," he said:

In the case of De Lima vs. Bidwell we hold that, upon the ratification of the treaty of peace with Spain, Puerto Rico ceased to be a foreign country, and that the duties were no longer collectible 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, imposts and excises shall be uniform throughout the United States." If Puerto 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 9, "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.

As to the requirement that duties shall be uniform, Justice Brown held that the constitution refers not to territories but to states. As to the broader question, the extension, "of their own force," of the revenue clauses of the constitution to newly-acquired territories, he concluded that—

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 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 or council or a governor and judges, to be appointed by the president.

We are also of 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."

While Justices White, Shiras and McKenna (who had dissented in "the De Lima case") concurred in the judgment in "the Downes case," they were at pains to announce that they did so upon grounds which not only differed from but were in conflict with those set forth by Justice Brown. This announcement was made in an opinion by Justice White. He argued that the crucial question is not whether constitutional limitations apply to the whole country. He conceded that the government of the United States is created by the constitution and that any limitations in that instrument upon the power of the government anywhere are limitations upon its power wherever its authority is exerted. There is, therefore, he said, "no room in this case to contend that congress can destroy the liberties of the people of Puerto Rico by exercising in their regard powers against freedom and justice which the constitution has absolutely denied." The crucial question, he asserted, is whether Puerto Rico has been incorporated into and become an integral part of the United States. After an extended examination of this question, Justice White concluded that—

where a treaty contains no conditions for incorporation, and, above all, where it not only has no such conditions, but expressly provides to the contrary, that incorporation does not arise until in the wisdom of congress it is deemed that the acquired territory has reached that state where it is proper that it should enter into and form a part of the American family. . . . . The result of what has been said is that whilst, in an international sense, Puerto Rico was not a foreign country, it was foreign to the United States in a domestic sense, because the island had not been incorporated into the United States, but was merely appurtenant thereto as a possession. As a necessary consequence, the impost in question assessed on merchandise coming from Puerto Rico into the United States after the cession was within the power of congress; and that body was not, moreover, as to such impost, controlled by the clause requiring that imposts should be uniform throughout the United States. In other words, the provision of the constitution just referred to was not applicable to congress in legislating for Puerto Rico.

As to the time when Puerto Rico shall be incorporated into and become an integral part of the United States, Justice White's opinion declares that this is not a judicial question for the decision of the courts, but is a political question for determination by the American people, speaking through congress. Justice Gray, also concurring in the decision, explained his own views briefly. He was of the opinion that—

So long as congress has not incorporated the territory into the United States, neither military occupation nor cession by treaty makes the conquered territory domestic territory in the sense of revenue laws. But those laws concerning "foreign countries" remain applicable to the conquered territory until changed by congress. . . . . If congress is not ready to construct a complete government of the conquered territory it may establish a temporary government, which is not subject to all the restrictions of the constitution.

A dissenting opinion in "the Downes case" was read by Chief Justice Fuller. Referring to the case of Loughborough against Blake, decided by the supreme court in 1820, when Marshall was chief justice and Washington, William Johnson, Livingston, Todd, Duvall and Story were his associates, the chief justice said that this court had then taken a different view of the question at issue

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from that of the majority now, and that until now the case of Loughborough against Blake had never been overruled. Referring specifically to the theory that the authority of the United States over territory acquired from Spain is by international law like that of any other nation, the chief justice said:

> The new master was, in this instance, the United States, a constitutional government with limited powers, and the terms which the constitution itself imposed, or what might be imposed in accordance with the constitution, were the terms on which the new master took possession. The power of the United States to acquire territory by conquest, by treaty or by discovery and occupation is not disputed, nor is the proposition that in all international relations, interests and responsibilities the United States is a separate, independent and sovereign nation. But it does not derive its powers from international law, which, though a part of our municipal law, is not a part of the organic law of the land. The source of national power in this country is the constitution of the United States; and the government, as to our internal affairs, possesses no inherent sovereign power not derived from that instrument and consistent with its letter and spirit.

Regarding the contention of the majority that congress may legislate in its own discretion with reference to taxation in Puerto Rico, yet must respect the fundamental guaranties of life, liberty and property, Chief Justice Fuller argued that—

> the power to tax involves the power to destroy, and the levy of duties touches all our people in all places under the jurisdiction of the government. The logical result is that congress may prohibit commerce altogether between the states and territories, and may prescribe one rule of taxation in one territory and a different rule in another. That theory assumes that the constitution created a government empowered to acquire countries throughout the world, to be governed by different rules than those obtaining in the original states and territories, and substitutes for the present system of republican government a system of domination over distant provinces in the exercise of unrestricted power.

Justices Peckham and Brewer concurred in the dissenting opinion of Chief Justice Fuller. While Justice Harlan also concurred in that opinion, he added some observations of his own. He declared that the result of sanctioning the principles announced by the majority in this case—

> will be a radical and mischievous change in our system of government. We will, in that event, pass from the era of constitutional liberty, guarded and protected by a written constitution, into an era of legislative absolutism, in respect of many rights that are dear to all peoples who love freedom. In my opinion, congress has no existence and can exercise no authority outside of the constitution. Still less is it true that congress can deal with new territories just as other nations have done or may do with their new territories. This nation is under the control of a written constitution, which is the supreme law of the land and the only source of the powers which our government, or any branch or officer of it, may exercise at any time or at any place. Monarchical and despotic governments, unrestrained in their powers by written constitutions, may do with newly-acquired territories what this government may not do consistently with our fundamental law. The idea that this country may acquire territories, anywhere upon the earth, by conquest or treaty, and hold them as mere colonies or provinces, is wholly inconsistent with the spirit and genius as well as with the words of the constitution. . . . The "expanding future of our country," justifying the belief that the United States is to become what is called a "world power," of which so much was heard at the argument, does not justify any such juggling with the words of the constitution as would authorize the courts to hold that the words "throughout the United States" in the taxing clause of the constitution, do not embrace a territory of the United States.

While Puerto Rico is thus left in the anomalous situation of a foreign country appurtenant to the United States—domestic as to our foreign relations, and foreign as to our domestic relations; its territory one of our national assets and its inhabitants our subjects—Cuba struggles on with the conditions imposed by the United States as prerequisites of independence. The reports on the Platt amendment were under discussion in the constitutional convention at Havana until the 24th, when the minority report (see p. 105) came to a vote and was defeated by 19 to 9. But this was not equivalent to a victory for the majority report (see p. 104), for on the 25th that report was withdrawn by the committee on relations and another substituted. This new majority report recites the joint resolution of congress at the beginning of the Spanish war, which declares that Cuba is and of right ought to be free and independent; recites the treaty of Paris; quotes the Platt amendment (see p. 105) literally; sets forth the assurances of Secretary Root and other American officials to the Cuban commission to Washington, describing them as having the character and value of official statements; asserts that these assurances constitute an authorized interpretation of the Platt amendment, and that the amendment, thus understood, is not incompatible with the independence and sovereignty of Cuba; and upon this basis recommends the acceptance of the Platt amendment. By unanimous agreement on the 27th, the 28th was fixed for final vote on the question; and upon that day this substituted majority report was adopted by the casting vote of the president of the convention. Three delegates were absent. Of the 28 on the floor, 14 voted for and 14 against adopting the report. The president then voting for acceptance, the report was adopted—15 to 14.

From the Philippines there are no dispatches of importance. Such as come relate chiefly to the organization of civil government. If resistance to American authority continues at all, the reports do not indicate it. A report from the Taft commission has been received at Washington, outlining the form of government to go into effect July 1, and there is a rumor, apparently well founded, that Aguinaldo is to visit the United States.

American casualties in the Philippines since July 1, 1898, inclusive of the current official reports given out in detail at Washington to May 28, 1901, are as follows:

Deaths to May 16, 1900 (see vol. iii., page 91)	1,847
Killed reported from May 16, 1900, to the date of the presidential election, November 6, 1900	100
Deaths from wounds, disease and accident, same period	468
Total deaths to presidential election	2,415
Killed reported since presidential election	41
Deaths from wounds, disease and accident, same period	220
Total deaths	2,676

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