

## Counsel for Parties.

All these suggestions, however, it is argued, but refer to expediency, and are entitled to no weight as against the theory that, under the Constitution, the tariff laws of the United States took effect of their own force immediately upon the cession. But this is fallacious. For, if it be demonstrated that a particular result cannot be accomplished without destroying the revenue power conferred upon Congress by the Constitution, and without annihilating the conceded authority of the government in other respects, such demonstration shows the unsoundness of the argument which magnifies the results flowing from the exercise by the treaty-making power of its authority to acquire, to the detriment and destruction of that balanced and limited government which the Constitution called into being.

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 ARMSTRONG v. UNITED STATES.

## APPEAL FROM THE COURT OF CLAIMS.

No. 509. Argued January 8, 9, 10 and 11, 1901.—Decided May 27, 1901.

*Dooley v. United States*, ante, 222, followed.

THIS was a petition to the Court of Claims by a British subject, to recover duties exacted by the collector of the port of San Juan, and paid under protest, upon goods, wares, and merchandise of the growth, produce, or manufacture of the United States, between August 12, 1898, and December 5, 1899.

The same demurrer was filed and the same judgment was entered as in the preceding case.

*Mr. Alphonso Hart* and *Mr. John G. Carlisle* for appellant. *Mr. John C. Chaney* and *Mr. Charles C. Leeds* were on *Mr. Hart's* brief.

*Mr. Solicitor General* and *Mr. Attorney General* for appellee.

## Syllabus.

MR. JUSTICE BROWN delivered the opinion of the court.

This case is controlled by the case of *Dooley v. United States*, No. 501, just decided. So far as the duties were exacted upon goods imported prior to the ratification of the treaty of April 11, 1899, they were properly exacted. So far as they were imposed upon importations after that date and prior to December 5, 1899, plaintiff is entitled to recover them back.

*The judgment of the Court of Claims is therefore reversed and the case remanded to that court for further proceedings not inconsistent with this opinion.*

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DOWNES *v.* BIDWELL.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE  
SOUTHERN DISTRICT OF NEW YORK.

No. 507. Argued January 8, 9, 10, 11, 1901.—Decided May 27, 1901.<sup>1</sup>

By MR. JUSTICE BROWN, in announcing the conclusion and judgment of the court.

The Circuit Courts have jurisdiction, regardless of amount, of actions against a collector of customs for duties exacted and paid under protest upon merchandise alleged not to have been imported.

The island of Porto Rico is not 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."

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<sup>1</sup> In announcing the conclusion and judgment of the court in this case, MR. JUSTICE BROWN delivered an opinion. MR. JUSTICE WHITE delivered a concurring opinion which was also concurred in by MR. JUSTICE SHIRAS and MR. JUSTICE MCKENNA. MR. JUSTICE GRAY also delivered a concurring opinion. The Chief Justice, MR. JUSTICE HARLAN, MR. JUSTICE BREWER, and MR. JUSTICE PECKHAM dissented. Thus it is seen that there is no opinion in which a majority of the court concurred. Under these circumstances I have, after consultation with MR. JUSTICE BROWN, who announced the judgment, made headnotes of each of the sustaining opinions, and placed before each the names of the justices or justice who concurred in it.