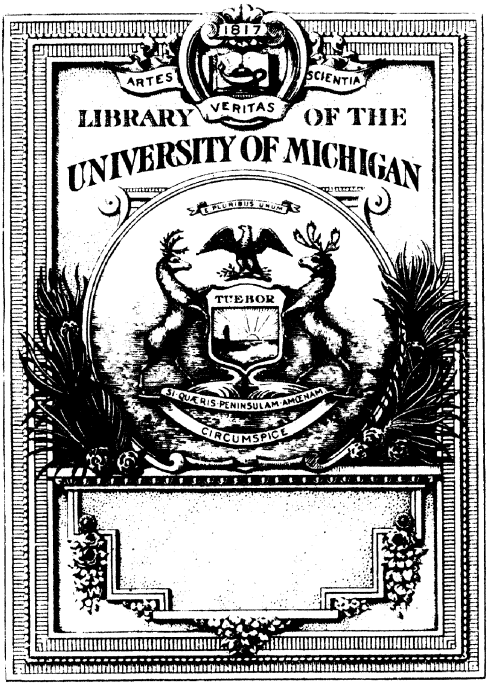
Pauey. The power and authority of Congress to pass a spec. tariff act for Cuba.



The Power and Authority of Congress

TO PASS

A Special Tariff Act for Cuba

WITHOUT WAITING FOR THE ESTABLISHMENT OF THE INDEPENDENT GOVERNMENT OF CUBA,

BRIEF SUBMITTED ON BEHALF OF

THE CHAMBER OF COMMERCE OF THE ISLAND OF CUBA.

FRANK D. PAVEY,
Counsel.

PAVEY & MOORE,
Attorneys at Law,
32 NASSAU STREET,
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The advocates of the passage of a special act of Congress for the relief of the commerce and industry of Cuba have been met with the objection that Congress cannot grant special concessions to Cuba in the American tariff upon Cuban products without the risk of embarrassment with foreign countries. The objection is made that such an act will constitute a violation of the "most favored nation" clause in treaties with foreign countries from which similar articles may be imported. The opponents of a special tariff act for Cuba urge that it will be necessary to wait for the establishment of the independent government of Cuba before any arrangement can be made which will not involve the United States in international complications.

It is submitted that such an act will have no effect upon the international relations of the United States. So far as foreign nations are concerned the validity of a special act of Congress granting concessions in the American tariff on Cuban products imported into the United States can be defended upon three grounds:

FIRST. The present international status of Cuba is that of a conquered territory. That international status will continue as long as the Island remains in the military occupation of the United States. While

that status continues the United States can legislate for Cuba with the same free power and authority with which it can legislate for one of its own territories.

SECOND. Even if Cuba had international status as a nation special concessions in the American tariff on Cuban products would cause no embarrassment to the United States in its relations with foreign countries with which there are existing treaties containing the "most favored nation" clause. Under the accepted rules of interpretation of those clauses in treaties with the United States any concessions in the American tariff in favor of Cuba can be made by special act of Congress in a form which will constitute no violation of the treaties in which such clauses are found.

THIRD. By the Treaty of Paris the United States has agreed to discharge the obligations that may under international law result from the fact of its occupation for the protection of life and property. Any act necessary and proper to the performance of those obligations is valid so far as other nations are concerned. The United States alone can determine what acts are necessary and proper for that purpose.

THE PRESENT INTERNATIONAL STATUS OF CUBA IS THAT OF A CONQUERED TERRITORY.[1]

This is not a matter of opinion or argument. The status of Cuba has been defined and stated by the

[1] Neely vs. Henkel, 180 U. S., 109.

Supreme Court of the United States "*as between the United States and all foreign nations*". This decision was given in the case of Charles F. W. Neely, who was charged with the embezzlement of public funds in Cuba during our military occupation of the Island. He had come to the United States where he was arrested. After his arrest Congress by special act, approved June 6, 1900, provided by law for the return of fugitives from justice to a foreign country or territory "occupied by or under the control of the United States".[2] In a contest over the validity and application of this act to the circumstances of the case the Supreme Court decided that Cuba was a foreign country within the meaning of that particular law, but defined the international status of Cuba in the following language:

"It is true that as between Spain and the United "States—*indeed, as between the United States and* "*all foreign nations—Cuba, upon the cessation of hos-* "*tilities with Spain and after the Treaty of Paris* "*was to be treated as if it were conquered territory.* "But as between the United States and Cuba that "Island is territory held in trust for the inhabitants "of Cuba to whom it rightfully belongs and to "whose exclusive control it will be surrendered when "a stable government shall have been established by "their voluntary action."[3]

[2] 31 U. S. Statutes, 656.

[3] Opinion of the Court, Neely vs. Henkel, 180 U. S., 109, 120.

THE PRESENT INTERNATIONAL STATUS OF CUBA AS A CONQUERED TERRITORY WILL LAST AS LONG AS THE UNITED STATES CONTINUES IN MILITARY OCCUPATION OF THE ISLAND.[4]

It makes no difference how peaceable and amicable the relations of the military occupant may be to the inhabitants of the Island. These facts do not change the international status of Cuba. The United States went to war with Spain for the purpose of driving Spain out of Cuba. From the very first it declared an intention to invade Cuba for the accomplishment of that purpose. It actually invaded Cuba and took military possession of a part of the Island. While the war was still in progress a portion of the Island was formally surrendered by the Spanish military commander to the general in command of the forces of the United States. Later a protocol of peace was signed between the United States and Spain by the terms of which Spain agreed to evacuate the Island. This protocol of peace was consummated in a treaty of peace by the terms of which the occupation of the Island by the United States was formally recognized by Spain. By this act the actual status of the Island was made its permanent international status until such time as the United States permits Cuba to establish a different status. All foreign countries have knowledge of and have acquiesced in this status of Cuba.

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[4] Wharton's International Law Digest, § 3, Vol. I., pp. 8–11. American Insurance Company vs. Canter, 1 Peters, 511. New Orleans vs. Steamship Company, 20 Wallace, 387. President Polk's second annual message, 1846. 9 Opinions of Attorneys General, 140. Fleming vs. Page, 9 Howard, 603, 615.

"Indeed, nothing can be clearer than that the "conquest of a country, or portion of a country, by a "public enemy entitles such enemy to the sovereignty, "and gives him civil dominion as long as he retains "his military possession." [5]

DURING THE MILITARY OCCUPATION OF CUBA BY THE UNITED STATES, CUBAN PRODUCTS HAVE THE SAME INTERNATIONAL STATUS AS AMERICAN PRODUCTS. [6]

So far as other nations are concerned, Cuban products are American products. In the event of war they would be lawful prize as American products. This is the rule of the British admiralty courts and of the Supreme Court of the United States.

The island of Santa Cruz, belonging to Denmark, was captured by the British and held by them during the War of 1812 between the United States and Great Britain. Adrian Benjamin Bentzon, a Dane and the owner of a plantation in Santa Cruz, withdrew to Denmark leaving his plantation in the management of an agent who shipped thirty hogsheads of sugar on a British ship from the estate to London. The ship was captured by an American privateer and brought into Baltimore where the ship and sugar were condemned as British goods and lawful prize. Bentzon claimed the sugar upon the ground that he was a Dane residing in Denmark, a country with

[5] Mr. Black, Attorney General, to Mr. Cass, Secretary of State, 9 Opinions of Attorneys General, 142.

[6] Thirty Hogsheads of Sugar vs. Boyle, 9 Cranch, 191. The Phœnix, Robinson's Admiralty Reports, 21. The Vrow Anna Catharina, Robinson's Admiralty Reports, 167. 9 Opinions of Attorneys General, 142. Wharton's International Law Digest, § 353, Vol. III., p. 345.

which we were at peace. His claim was denied upon the ground that the sugar was British.

In delivering the decision of the Supreme Court, Chief Justice Marshall said:

"Some doubt has been suggested whether Santa "Cruz, while in the possession of Great Britain, "could properly be considered as a British island. "But for this doubt there can be no foundation. "Although acquisitions made during war are not "considered as permanent until confirmed by treaty, "yet to every commercial and belligerent purpose, "they are considered as a part of the domain of the "conquerer, so long as he retains the possession and "government of them. The island of Santa Cruz, "after its capitulation, remained a British island "until it was restored to Denmark." * * * * * *

"While that island belonged to Denmark, the "produce of the soil, while unsold, was, according to "this ule, Danish property, whatever might be the "general character of the particular proprietor. "When the island became British, the soil and its "produce, while that produce remained unsold, were "British." [7]

In the decision of this case the Supreme Court quoted and approved the rule laid down by the British courts of admiralty in former cases. [8] In the case of the Phœnix the vessel was captured in a voyage from Surinam to Holland and a part of the cargo was claimed by persons residing in Ger-

[7] Thirty Hogsheads of Sugar vs. Boyle, 9 Cranch, 191, 195, 197.

[8] The Phoenix, Robinson's Admiralty Reports, 21. The Vrow Anna Catharina, Robinson's Admiralty Reports, 167.

many, a neutral country, as the produce of their estates in Surinam. In pronouncing judgment Sir William Scott said:

"Certainly nothing can be more decided and "fixed, as the principle of this Court and of the "Supreme Court, upon very solemn arguments, than "that the possession of the soil does impress upon the "owner the character of the country, so far as the "produce of that plantation is concerned, in its trans-"portation to any other country, whatever the local "residence of the owner may be." [9]

DURING THE CONTINUANCE OF MILITARY OCCUPATION THE UNITED STATES HAS LAWFUL AUTHORITY, SO FAR AS OTHER NATIONS ARE CONCERNED, TO GOVERN CUBA BY LEGISLATION OR OTHERWISE AS IT PLEASES. [10]

During our military occupation of Cuba that island is a part of the territory of the United States so far as other nations are concerned. This principle has been sustained by the Supreme Court of the United States in two instances of the military occupation of territory in the history of the United States. In the one case it was a question of American military occupation of foreign territory; in the other case, foreign military occupation of American territory.

During the war with Mexico the American forces captured Tampico, subjected the State of Tamaulipas, and held possession of the captured

[9] Opinion by Sir William Scott, The Phoenix, Robinson's Admiralty Reports, 21.

[10] Fleming vs. Page, 9 Howard, 603. United States vs. Rice, 4 Wheaton, 246. Wharton's International Law Digest, § 3, Vol. I., p. 8; §§ 354-5, Vol. III., pp. 348-350. 9 Opinions of Attorneys General, 140.

territory. In determining the question whether goods imported into the United States from Tampico were subject to duties in the ports of the United States under the revenue laws of the United States the Supreme Court of the United States defined the status of Tampico and Tamaulipas in the following terms :

"It is true, that, when Tampico had been cap-
"tured, and the State of Tamaulipas subjugated,
"other nations were bound to regard the country,
"*while our possession continued*, as the territory of
"the United States, and to respect it as such. * * *
"For, by the laws and usages of nations, conquest is
"a valid title, while the victor maintains the exclu-
"sive possession of the conquered country. The
"citizens of no other nation, therefore, had a right to
"enter it without the permission of the American
"authorities, nor to hold intercourse with its inhabi-
"tants, *nor to trade with them. As regarded all*
"*other nations, it was part of the United States, and*
"*belonged to them as exclusively as the territory in-*
"*cluded in our established boundaries.*" [11]

Castine, a town in the State of Maine, was captured by the British forces in 1814, and remained under their military control until after the ratification of the treaty of peace in February, 1815. The British government established a custom house and admitted certain goods to be imported which remained in Castine until after the British evacuated the town. After the evacuation the United States col-

[11] Opinion of the Court, Fleming vs. Page, 9 Howard, 603, 615.

lector of customs attempted to collect duties on the goods under the American tariff. The Supreme Court of the United States held that territory of the United States temporarily occupied by military possession of the British was British territory and subject to any rules, regulations and laws which the British government chose to impose, and was not in any sense subject to the laws of the United States during such occupancy. The Court said:

"Castine was, therefore, during this period, so far "as respected our revenue laws, to be deemed a for- "eign port; and goods imported into it by the inhab- "itants were subject to such duties only as the Brit- "ish government chose to require." [12]

But it is not necessary to rely solely upon the military occupation of Cuba by the United States.

EVEN IF CUBA HAD AN INDEPENDENT INTERNATIONAL STATUS, CONGRESS CAN BY SPECIAL ACT PROVIDE FOR THE IMPORTATION OF ARTICLES, THE GROWTH, PRODUCE OR MANUFACTURE OF THE ISLAND OF CUBA, AT LOWER RATES OF DUTY THAN THOSE PRESCRIBED BY THE GENERAL TARIFF LAW OF THE UNITED STATES WITHOUT VIOLATING THE "MOST FAVORED NATION" CLAUSE IN TREATIES WITH OTHER COUNTRIES FROM WHICH SIMILAR ARTICLES MAY BE IMPORTED.

The position has been uniformly maintained by the United States that the "most favored nation" clause applies only to gratuitous concessions and

[12] Opinion of the Court, United States vs. Rice, 4 Wheaton, 246, 254.

does not apply to any advantage granted in return for a consideration, expressed or implied.

This proposition has the sanction of executive and judicial authority. It has been asserted and maintained by the State Department in its diplomatic correspondence with foreign governments and sustained and enforced by the Supreme Court of the United States in its interpretation of treaties and acts of Congress in their effects upon private rights. Practically all foreign countries have acquiesced in this position of the United States.

As early as 1792 our State Department took the position that the "most favored nation" clause did not have in view a nation unknown at the time of using the term (as was the United States at the time when the older treaties containing the phrase were used) and so dissimilar in all respects as to furnish no ground of just reclamation to any nation.[13]

As early as 1832 the position was well established in this country that a covenant to give privileges granted to the "most favored nation" only refers to gratuitous privileges, and does not cover privileges granted on the condition of a reciprocal advantage.[14]

The United States has maintained that it was not constrained to grant to "most favored nations", without consideration, privileges which we had by special engagement stipulated to concede to countries

[13] Mr. Jefferson, Secretary of State, Report to the President, March 18, 1792. 7 Jefferson's Works, 584; Wharton's International Law Digest, Vol. II., p. 37.

[14] Mr. Livingston, Secretary of State, to President Jackson, January 6, 1832. Wharton's International Law Digest, Vol. II., p. 39. Mr. Frelinghuysen, Secretary of State, to Mr. Bingham, June 11, 1884. Wharton's International Law Digest, Vol. I., pp. 507, 508.

like Hawaii and Canada for a valuable consideration. [15]

"It was held by two of my predecessors, Mr. "Clay and Mr. Livingston, that a covenant to extend "to third parties privileges granted to a most "favored nation only refers to gratuitous privileges "and does not cover privileges granted on the con- "dition of a reciprocal advantage; *i. e.*, for a con- "sideration expressed." [16]

The Supreme Court of the United States has affirmed the same doctrine in the following language:

"Our conclusion is, that the treaty with Den- "mark does not bind the United States to extend to "that country, without compensation, privileges "which they have conceded to the Hawaiian Islands "in exchange for valuable concessions. On the "contrary, the treaty provides that like compensa- "tion shall be given for such special favors. When "such compensation is made it will be time to con- "sider whether sugar from her dominions shall be "admitted free from duty." [17]

Cuba comes within any one of the above rules of construction of the "most favored nation" clause. As a nation Cuba was unknown at the time of the negotiation of any of the treaties of the United States in which the "most favored nation" clause

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[15] Mr. Frelinghuysen, Secretary of State, to Mr. Foster, June 28, 1884. Wharton's International Law Digest, Vol. II., p. 41.

[16] Mr. Bayard, Secretary of State, to Mr. Hubbard, July 17, 1886. Wharton's International Law Digest, Vol. II., p. 42.

[17] Opinion of the Court, Bartram vs. Robertson, 122 U. S., 116-121.

occurs. It is in process of creation into a new nation by the United States under exceptional circumstances. The history of the Teller Resolution and Platt Amendment together put Cuba in a position which gives the United States the right to grant her exceptional commercial privileges without any new equivalent if the United States chooses to do so. But this is unnecessary. The new equivalent can be given by Cuba.

This statement of the general rule of interpretation is met by the argument that Cuba cannot give a reciprocal advantage for special concessions in the American tariff because there is no independent government in Cuba to grant such a reciprocal advantage. It is stated that Cuba must wait until her independent government has been inaugurated and has negotiated a treaty of reciprocity with the United States. This argument is based upon the theory that reciprocity in trade and commerce can be established only by treaty. This theory is erroneous in law and in fact. The existence of reciprocal advantages and not the method by which they are brought into existence determines the validity of the arrangement as against countries having treaties with the "most favored nation" clause. The element of a *treaty* or *contract* is frequently present but not essential to the validity of the arrangement.[18]

The original privileges or concessions and the reciprocal advantages may be contained in one

[18] 21 Opinions of Attorneys General, 80. 18 Opinions of Attorneys General, 260. Mr. Bayard, Secretary of State, to Mr. De Bounder, Nov. 7, 1885. Wharton's International Law Digest, Vol. II., p. 42.

treaty, in a treaty and a law, in two laws or two treaties, or in a law or treaty on the one side and the existence of an actual condition or state of affairs upon the other.[19]

The reciprocal advantage which constitutes the consideration for the original privilege or concession may be a tariff concession, a right of navigation, a trading or commercial concession, a condition existing in the foreign country, or to be brought into existence in future or the continuance of an existing condition. The reciprocal advantage may be some favor that it would not be in the power of any other country to grant. All other countries can be asked to comply with an impossible condition as a consideration for securing the same original concession.[20]

Judge Wallace has even suggested that the same rule of interpretation would apply to a law or treaty "made in the interest of our own commerce or manufactures, or founded upon special considerations of comity between the two nations".[21]

Propinquity and neighborliness may create special and peculiar terms of intercourse not equally open to all the world.[22] The principle that propinquity and political interests in themselves afford a sufficient answer to claims based upon the "most favored nation" clause has been explicitly recognized by Ger-

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[19] 18 Opinions of Attorneys General, 260. 21 Opinions of Attorneys General, 80. Wharton's International Law Digest, § 134, Vol. II., p. 37-43.

[20] 18 Opinions of Attorneys General, 260. 21 Opinions of Attorneys General, 80. Wharton's International Law Digest, § 134, Vol. II., pp. 37-43.

[21] Bartram vs. Robertson, 21 Blatchford, 217.

[22] Mr. Bayard, Secretary of State, to Mr. Hubbard, July 17, 1886. Wharton's International Law Digest, Vol. II., p. 42.

many in reference to the relations between the United States and Hawaii.[23]

The original privilege and reciprocal advantage need not be and generally are not equal in value. No third party can question the value of the consideration as long as it is a valuable one, and not a mere pretense. The reciprocal advantage which constitutes the valuable consideration for the original privilege need not be a specific advantage given in the first instance solely for that purpose. It can be any advantage given to or enjoyed by the United States.

"Not unfrequently the equivalent may not even "be clearly deducible from the instrument itself con- "veying the supposed favor. Peculiar considerations "may lead to the grant of what, on a first impression, "might be conceived to be a voluntary favor, but "which has really been founded upon a received "equivalent; and these considerations may some- "times apply to the entire commerce and navigation "of a country, and at others to particular ports only.[24]

ANY VALUABLE RIGHT OF NAVIGATION, TRADE, COMMERCE OR INDUSTRY IS A SUFFICIENT CONSIDERATION TO SUSTAIN THE VALIDITY OF PREFERENTIAL RATES IN THE AMERICAN TARIFF ON CUBAN PRODUCTS AS AGAINST THE CLAIMS OF NATIONS HAVING TREATIES WITH THE "MOST FAVORED NATION" CLAUSE.

The United States has already granted to American vessels the right to engage in the coastwise trade

[23] Treaty of Commerce and Navigation between Germany and Hawaii, March 25, September 19, 1879.

[24] Mr. Clay, Secretary of State, to Mr. Poinsett, March 26, 1825. Wharton's International Law Digest, Vol. II., pp. 38-39.

of Cuba upon terms of equality with Cuban vessels. The President by virtue of his authority as Commander in Chief of the Army and Navy has taken from Cuba this exclusive privilege and advantage and conferred it upon the United States.[25] It is an advantage enjoyed by the American merchant marine at the expense of the Cuban merchant marine. The independent government of Cuba may not wish to continue this advantage in favor of American vessels. The owners of the American vessels will want it continued. The continued enjoyment of that right by American vessels is in itself a sufficient reciprocal advantage to sustain the validity of an act of Congress granting reductions in the American tariff on Cuban products. If the reductions were to be given force and effect upon condition that that single advantage to the American merchant marine be continued in force and effect, the law would be valid and effectual against the claims of foreign governments having treaties with the United States containing the "most favored nation" clause.

THE TREATY OF PARIS IMPOSES DUTIES UPON CONGRESS.

In the Treaty of Paris the United States assumed and agreed to discharge the obligations that may under international law result from its occupation for the protection of life and property in the Island during that period of occupation. Whatever those duties are they are duties which devolve upon the United

[25] Military Orders issued December 13, 1898; June 22, 1901.

States. They are not duties of the Military Governor, the Secretary of War, or the President as individuals. They are duties which the executive, the judicial and the legislative branches of the government of the United States are all equally bound to recognize and perform. Most of the duties have been performed by the executive branch of the Government. In the performance of those duties the President has appointed military governors to rule over Cuba and has conferred upon them authority to appoint subordinate officers and direct the local affairs of the island in every respect. In pursuance of that authority municipal laws have been abrogated, changed and promulgated; municipal goverments have been abolished, altered and established; a constitutional convention has been chosen, and has adopted a constitution for the future government of the Island; an election has been held for officers who are to compose that independent government; public works have been undertaken; schools have been opened; works of sanitation and internal improvements have been commenced and are in process of execution.

The President by virtue of his authority as Commander in Chief of the Army and Navy has promulgated two general tariff laws at different periods imposing duties upon imports and exports.[26] Numerous orders have been issued from time to time promulgating various modifications of these general tariffs. Some have been issued for the purpose of correcting errors in the prescribed tariffs and others

[26] Military Orders issued December 13, 1898; March 31, 1900.

for the purpose of making more scientific classifications and descriptions of articles. In some instances changes of rates have been made and special concessions granted in order to aid in the rehabilitation of destroyed plantations and railways. These orders have been issued and performed according to the necessity of the day and hour. All of them have been done and can be justified only upon the ground that they were necessary and proper acts in the performance of the duties imposed upon the executive branch of the government of the United States under the Treaty of Paris during the military occupation of the island by the United States.

The mere fact that most of the official acts in Cuba have been performed by the executive officers of the government does not in any way militate against the proposition that Congress is equally bound to act whenever it is shown that action by Congress is necessary to the proper performance of the duties of the United States to Cuba.

CONGRESS HAS ACTUALLY EXERCISED ITS POWER AND AUTHORITY TO LEGISLATE FOR THE BENEFIT OF CUBA AND THE RECIPROCAL ADVANTAGE OF THE UNITED STATES ON THREE SEPARATE OCCASIONS SINCE THE COMMENCEMENT OF THE MILITARY OCCUPATION.[27]

By an act approved February 10, 1900, Congress conferred upon Cuban vessels entering the ports of the United States all the rights and privileges of the

[27] U. S. Statutes, Vol. 31, p. 27; Vol. 31, p. 656; Vol. 31, p. 897.

"most favored nation". Cuban vessels and their cargoes were made subject to no higher charges in ports of the United States than are imposed on the vessels and cargoes of the "most favored nation" in the same trade.[28] Prior to the passage of this act the President by virtue of his authority as Commander in Chief of the Army and Navy had issued orders permitting American vessels to enter the ports of Cuba and engage in the coastwise trade of Cuba upon equal terms with Cuban vessels. Congress did not authorize Cuban vessels to engage in the coastwise trade of the United States. By this combined legislation and executive action American vessels were given equal privileges with Cuban vessels in the coastwise trade of Cuba, but Cuban vessels were not given any privileges in the coastwise trade of the United States. The United States took for American vessels the right or privilege of engaging in the coastwise trade of Cuba upon equal terms with Cuban vessels and gave Cuban vessels a limited compensation in the American foreign trade. The United States by virtue of its military occupation of Cuba discriminated against vessels of the "most favored nations" in Cuban ports in favor of American vessels and gave the same foreign vessels no compensation in either the American or Cuban trade.

By an act approved June 6, 1900, Congress provided for the return to Cuba of fugitives from justice who had sought refuge in the United States.[29] This

[28] U. S. Statutes, Vol. 31, p. 27.

[29] U. S. Statutes, Vol. 31, page 656.

act is the only one of the three which has come before the courts for adjudication. In this case the Supreme Court of the United States not only defined the position of Cuba in the language quoted above, but also sustained the validity of the act itself upon the express ground that it was a necessary and proper exercise of authority by Congress in the performance of the duty and obligation of the United States under the Treaty of Paris to protect life and property in Cuba. The Court said:

"The power of Congress to make all laws necessary and proper for carrying into execution as well "the powers enumerated in section 8 of article 1 of "the Constitution, as all others vested in the Government of the United States, or in any Department "or the officers thereof, includes the power to enact "such legislation as is appropriate to give efficacy to "any stipulation which it is competent for the President by and with the advice and consent of the "Senate to insert in a treaty with a foreign power." [30]

On March 2d, 1901, Congress passed a special act as an amendment to the act making appropriation for the army, known as the Platt Amendment, which provides for a large measure of permanent control of Cuba by the United States and for permanent rights of interference by the United States in the internal affairs of Cuba. It also requires the concession by Cuba to the United States of naval stations on her coasts as a condition precedent to the withdrawal of the forces of the United States and the

[30] Opinion of the Court, Neely v. Henkel, 180 U. S., 120.

termination of the military occupation. It also exacts an agreement that no similar concession shall be made to any other foreign power.[31]

WITH THESE PRECEDENTS IT IS PLAIN THAT IT IS A LAWFUL EXERCISE OF CONGRESSIONAL POWER TO PASS A SPECIAL TARIFF ACT FOR THE RELIEF OF CUBAN COMMERCE AND INDUSTRY BY ADMITTING THE PRODUCTS OF THAT INDUSTRY TO THE MARKETS OF THE UNITED STATES AT PREFERENTIAL RATES.

The act will derive its validity from the mere fact of military occupation of Cuba by the United States. It will derive its justification from its necessity to the proper performance of the duties of the United States under the Treaty of Paris. The question of its necessity is a question of fact which must be determined by Congress. Once determined by Congress it can be questioned only in reference to the effect it may have upon the commercial relations of the United States with foreign countries. The paramount authority of the United States as the military occupant to treat the Island as one of its own territories so far as other nations are concerned is a sufficient answer to any objections from foreign countries.

A special act can be drawn in a form to meet all the practical exigencies of the case. It can be made to cover the interval of time from its passage until the final adjustment of governmental and commercial relations between the United States and Cuba. As

[31] U. S. Statutes, Vol. 31, p. 897.

long as the United States remains in military occupation of the island, Cuba has no other international status than that of any territory of the United States. The United States can do with Cuba as it pleases so far as foreign nations are concerned. It does not matter whether the military occupation is peaceable or hostile, temporary or permanent. Any temporary occupation may lead to a permanent occupation. There is no better ground upon which foreign nations can object to tariff concessions in favor of Cuba during a temporary military occupation than during a permanent occupation by way of annexation with free admission of its products to the markets of the United States.

The inauguration of the independent government will not terminate the military occupation of the United States. The military forces of the United States will necessarily remain there in practical control of the country for some time after the nominal establishment of the independent government in order to give that government a proper period of time within which it may organize whatever police or rural guard it finds necessary to maintain order. The tariff prescribed by the President as Commander in Chief of the Army and Navy will necessarily remain in force and effect after the inauguration of the independent government until that government has had time to frame and enact a tariff law for Cuba. Practically, the termination of the military occupation can be made simultaneous with the final enactment of a Cuban tariff law estab-

lishing trade and commerce between the United States and Cuba upon a permanent basis of reciprocal advantage. The proposed special act can be made to have effect and be in force until the final termination of military occupation and beyond such termination of military occupation, provided Cuba enacts a law granting equivalent preferential rates in the Cuban tariff in favor of American products. The concessions in the Cuban law will then constitute a permanent reciprocal advantage to the United States and be a sufficient consideration for the permanent continuance of the concessions in the American tariff.

Respectfully submitted on behalf of the Chamber of Commerce of the Island of Cuba.

Dated January 23, 1902.

FRANK D. PAVEY,
Counsel.

PAVEY & MOORE,
Attorneys at Law,
32 Nassau Street,
New York, N. Y.