PANAMA REPUBLIC AND CANAL.

COURSE OF THE AMERICAN GOVERNMENT.

THE future historian, when he sits down to write the narrative of the establishment of the republic of Panama, will treat it as the culminating step in a movement that had been in progress for more than four hundred years. Viewed in that perspective, it is likely to appear a far less hasty proceeding than it seemed to be at the time it was effected. The final step was swift only when contemplated by itself. Considered in connection with the long and wearisome and annoying journey which had preceded it, the wonder is not that it was taken so quickly, but that human patience had delayed so long before taking it.

I shall endeavor, in making a record of it, to treat it as completely as possible in the light of history, for it has become historical fact. The new republic is established with the recognition of the United States and all the leading nations of the world, and the treaty by which the United States guarantees and pledges itself to maintain the independence of the republic of Panama was ratified in the Senate by a vote of sixty-six to fourteen, so many Democrats voting for it as to make approval of the Roosevelt administration's course virtually non-partisan, and hence popular. Instead of arguing the case for the government, I shall content myself with a statement of its reasons for the action which it took, citing these as its answer to the main points of the criticism which has been made against its course.

Did the Roosevelt administration act too quickly in recognizing the new republic?

In considering this question, both the President and the Secretary of State, according to their official explanations of their course, recalled the long history of the efforts of the American government to pierce the Isthmus with a canal. As early as 1528 a proposal was laid before the Emperor Charles V. for the opening of such a way across the Isthmus of Panama. From that day till 1904 the project continued to occupy a place among

the great enterprises yet to be accomplished. It remained unfulfilled only because the experience of four hundred years had demonstrated that private effort was wholly inadequate to the purpose, and that the work must be performed, if at all, under the auspices of a government of the largest resources. There was only one such government in a position to undertake it. By a well settled policy, in which all American nations are understood to concur, the assumption of the task by any of the great governments of Europe was pronounced to be inadmissible. Among American governments there was only one that seemed to be able to assume the burden and that was the government of the United States. To the accomplishment of this object that government had for years directed its diplomacy. It occupied a place in the instructions to our delegates to the Panama Congress during the administration of John Quincy Adams. It formed the subject of a resolution of the Senate in 1835, and of the House of Representatives in 1839. In 1846 its importance had become still more apparent by reason of the Mexican War, when a treaty was made with New Granada in regard to it. Four years later the Clayton-Bulwer Treaty was entered into between this country and Great Britain. That treaty instead of furthering the project proved to be an insuperable bar to it. During the fifty-one years of its existence, nothing was done toward the construction of a canal. It became, almost immediately after ratification, the subject of bitter attack in this country because of its violation of the Monroe Doctrine, in allowing England and other European nations to share with us control of a canal, and because of England's alleged failure to comply with its conditions. From time to time, efforts were made to have the treaty denounced, or declared by us void because of England's failure to comply with its requirements, but the American government refused steadily to take this view, holding that we were bound in honor to abide by the treaty till England should consent to its abrogation. That consent was given, and in December, 1901, a new treaty was agreed upon, the main point of which is the complete withdrawal of Great Britain from partnership with the United States in the control of any canal that may be constructed. It was to be built with American money, and controlled by Americans, and its neutrality maintained by Americans. The United States secured power "to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder," but beyond that no express power is given to fortify it, while the language of the treaty

seems to amount to a prohibition in that direction. "The canal," it reads, "shall be free and open to the vessels of commerce and of war of all nations observing the rules prescribed for the preservation of its neutrality, and shall never be blocked, nor shall any right of war be exercised, nor any act of hostility be committed within it."

The way now seemed clear for the construction of the canal. On January 22, 1902, the second Pan-American Conference, sitting at the City of Mexico, adopted the following resolution:—

"The Republics assembled at the International Conference of Mexico applaud the purpose of the United States government to construct an inter-oceanic canal, and acknowledge that this work will not only be worthy of the greatness of the American people, but also in the highest sense a work of civilization and to the greatest degree beneficial to the development of commerce between the American States and the other countries of the world."

Among the delegates who signed this resolution, which was adopted without dissent, was the delegate of Colombia. The next step was the decision of the United States in favor of the Panama route in preference to that of Nicaragua, and the passage of the Spooner Act in June, 1902, authorizing the President to acquire at a cost not exceeding forty million dollars the property and concession of the Panama Canal Company and to obtain from Colombia, on such terms as he deemed reasonable, control of the territory necessary for the canal. Therefore, negotiations were opened with Colombia, and in January, 1903, the Hay-Herran Treaty was agreed upon. This was ratified by the Senate and was sent to Colombia for approval by its government. While the treaty was in negotiation between the representatives of the United States and Colombia, objection was made by the Colombian government through its representatives to the first article, which provided: "The government of Colombia authorizes the new Panama Canal Company to sell and transfer to the United States its rights, privileges, properties, and concessions, as well as the Panama railroad and all the shares or part of the shares of that company." The Colombian government asked to have this modified so as to read that the permission accorded by Colombia in regard to canal and railway rights should "be regulated by previous special arrangement entered into by Colombia." This request the American government refused to grant, and it was abandoned by Colombia, whose representatives signed the treaty with the full authorization as it stands in the article, which is identical with that in the original draft of a treaty pre-

sented by Colombia itself through its minister to the American government in March, 1902. Some time after the treaty had been signed, the American government was surprised to learn that the Colombian government, in violation of this article, had sent notices to the canal company saying that further permission, in addition to that contained in the treaty, was necessary for the transfer of its concession and those of the railway company to the United States, and requiring the companies to cancel all obligations of Colombia to them, and thus destroy the rights, privileges, and concessions which Colombia by the treaty solemnly authorized the canal company to sell to the United States. That, if successful, would of course destroy the treaty by defeating its main purpose. This was one of many similar attacks, all instigated by the Colombian government, against the treaty which its representatives had signed, conduct which, as Secretary Hay has pointed out, is in violation of the familiar rule that "two governments, in agreeing to a treaty through their duly authorized representatives, bind themselves, pending its ratification, not only not to oppose its consummation, but also to do nothing in contravention of its terms." The attack which is believed to have been the main cause of the rejection of the treaty by the Colombian Congress was made in a report to the Colombian Senate by its canal committee, in which it was held that at the end of a year all the concessions granted by the government to the Panama Canal Company would lapse, and that then Colombia could take for itself the forty million dollars which the United States had agreed to pay the Panama Canal Company. After this the treaty was rejected and the congress adjourned.

WHY THE PRESIDENT WAS PROMPT.

It is the contention of the American government that Colombia's course in regard to the treaty showed conclusively the hopelessness of ever getting a satisfactory agreement from her. That was the conclusion of the people of Panama, for they made up their minds that in case the treaty was rejected they would revolt, and they made elaborate preparations, months in advance to do so, fully anticipating rejection.

This was the situation when the revolution took place on November 3, 1903. President Roosevelt had become so thoroughly convinced, when the treaty was rejected, that further efforts to reach agreement with Colombia on fair and equitable terms would be useless, that his intention was, he said in a sub-

sequent message, "to consult the congress as to whether under such circumstances it would not be proper to announce that the canal was to be dug forthwith; that we would give the terms that we had offered and no others; and that if such terms were not agreed to we would enter into an arrangement with Panama direct, or take what other steps were needful in order to begin the enterprise." In taking this position, he was acting in accordance with a sentiment expressed by Secretary Cass, in 1858, in the following official statement of the American government's attitude:—

"While the rights of sovereignty of the states occupying this region (Central America) should always be respected, we shall expect that these rights be exercised in a spirit befitting the occasion, and the wants and circumstances that have arisen Sovereignty has its duties as well as its rights, and none of these local governments, even if administered with more regard to the just demands of other nations than they have been, would be permitted, in a spirit of eastern isolation, to close the gates of intercourse on the great highways of the world, and justify the act by the pretension that these avenues of trade and travel belong to them, and that they choose to shut, or, what is almost equivalent, to encumber them with such unjust relations as would prevent their general use."

Forty-six years had passed since that opinion was expressed, and during that time no progress had been made toward beginning the construction of the canal. Finally, Colombia had placed herself in the pathway of progress in precisely the obstructive manner which Secretary Cass had declared would not be permitted. This was the final provocation, not only to the United States but to Panama. The latter rose in revolt and declared its independence, and the United States government recognized its independent existence as a republic immediately. In justification of such prompt action, the Roosevelt administration cited the condition of affairs on the Isthmus at the moment. Panama had been accumulating material for war for several months. The Isthmus was, according to the reports of trustworthy authorities, a perfect arsenal and its people were determined to make the most desperate resistance to the efforts of Colombia to subdue them. That Colombia was also prepared is shown by the fact that at the moment when independence was proclaimed, on the morning of November 3, she had a gunboat with between four and five hundred troops off Colon on the way to Panama. Secretary Hay, in his reply to General Reyes, thus defines the situation:—

"On the one hand stood the government of Colombia invoking in the name of the treaty of 1846 the aid of this government in its efforts to sup-

press the revolution; on the other hand stood the republic of Panama that had come into being in order that the great design of that treaty might not be forever frustrated, but might be fulfilled The Isthmus was threatened with desolation by another civil war, nor were the rights and interests of the United States alone at stake; the interests of the whole civilized world were involved. The republic of Panama stood for those interests, the government of Colombia opposed them. Compelled to choose between these two alternatives, the government of the United States, in no wise responsible for the situation that had arisen, did not hesitate. It recognized the independence of the republic of Panama, and upon its judgment and action in the emergency the Powers of the world have set the seal of their approval."

That civil war would have begun immediately on November 3 but for the intervention of the United States, is proved by the official report of Commander Hubbard, of the United States gunboat, "Nashville," who had been ordered by the American government to Colon to protect the neutrality of the Isthmus along the line of the Panama Railway. The commanding officers of the Colombian troops had asked for transportation over the railway to Panama for their troops and it had been granted, but it was prohibited by Commander Hubbard as in violation of the perfect neutrality of the line of transit which the United States is bound to maintain. If Commander Hubbard had not been on the spot, the troops would have gone to Panama and civil war would have been begun on November fourth. The Colombian troops, after failing to get transportation to Panama, sought to occupy Colon on November fifth, in violation of an agreement between their commanding officers and Commander Hubbard. The latter, as soon as he learned of this intention, landed his full force of marines, only forty-two in number, for the avowed purpose of protecting the lives and property of American citizens if threatened, and by doing this and maintaining a cool and firm attitude in the presence of the Colombian troops when they entered the city, he prevented bloodshed and the beginning of civil war. President Roosevelt said on this point in his message of January 4, 1904:—

"Instead of there having been too much prevision by the American government for the maintenance of order and the protection of life and property on the Isthmus, the orders for the movement of American warships had been too long delayed; so long, in fact, that there were but forty-two marines and sailors available to land and protect the lives of American men and women * * * It clearly appears that the fact that there was no bloodshed on the Isthmus was directly due,—and only due,—to the prompt and firm enforcement by the United States of its traditional policy."

If civil war had once begun, how long would it have lasted, and how wide would its complications have extended? In considering this question, the President and Secretary Hay had to judge the future in the light of the past. During the previous fifty-seven years, there had been on the Isthmus no less than fifty-three revolutions, almost one a year, some of them lasting for several years, and a recent one between Panama and Colombia extending over three years. In none of these had there been such provocation for revolt as the rejection of the treaty, or such formidable preparations for resistance. The people of Panama were convinced that their future as a community or state, financial and other, depended absolutely upon the construction of the canal. If that were built, a future of steadily increasing power and importance lay before them. If it were not built in their territory it would be built in Nicaragua, and the doom of the cities of Panama and Colon would be sounded, for even the Isthmian Railway would cease to be operated and Panama would fall into a speedy and hopeless decline. As one of the leading citizens of Panama said soon after the revolution:—

"We looked upon the building of the canal as a matter of life or death to us. We wanted that because it meant, with the United States in control of it, peace and prosperity for us.

"Notwithstanding all that Colombia has drained us of in the way of revenues, she did not bridge for us a single river, nor make a single roadway, nor erect a single college where our children could be educated, nor do anything at all to advance our industries."

Under these conditions, great provocation followed by unusual preparations for resistance, it was a reasonable supposition that civil war, once instituted, would last for several years. It was the avowed intention of Colombia to delay the whole question of a canal for a year in order to get into position to claim for herself the forty million dollars that had been promised by the United States to the Panama Canal Company. If, after a year of conflict, with the United States government constantly on guard to protect the neutrality of the Isthmus and to keep its line of transit open, Colombia had endeavored to enforce its contention that all rights and concessions to the canal company had lapsed and had reverted to herself, she would unquestionably have brought France into the conflict, for that government would be compelled to uphold the rights of its citizens who were stockholders in the canal company. Under these circumstances, it would have been very difficult for the United States to avoid being drawn into the conflict, if our government had used its

power to aid Colombia in suppressing the revolt, or had refrained from exerting its influence in the direction of peace by promptly recognizing the independence of Panama. It was a case of instant recognition, or a long and bloody conflict, with possible international complications. The Roosevelt administration, called to decide between these alternatives, decided for instant recognition. As President Roosevelt put it in his message of January 4, 1904:—

"Recognition by this government was based upon a state of facts in no way dependent for its justification upon our action in ordinary cases I have not denied, nor do I wish to deny, either the validity or the propriety of the general rule that a new state should not be recognized as independent till it has shown its ability to maintain its independence. This rule is derived from the principle of non-intervention, and as a corollary of that principle has generally been observed by the United States. But, like the principle from which it is deduced, the rule is subject to exceptions; and there are, in my opinion, clear and imperative reasons why a departure from it was justified and even required in the present instance These reasons embrace, first, our treaty rights; second, our national interests and safety; and, third, the interests of collective civilization.

"Instead of using our forces, as we were invited by Colombia to do, for the twofold purpose of defeating our own rights and interests and the interests of the civilized world, and of compelling the submission of the people of the Isthmus to those whom they regarded as oppressors, we shall, as in duty bound, keep the transit open, and prevent its invasion."

COMPLICITY AND TREATY OBLIGATIONS.

Was there complicity between the American government, or any of its representatives, and the revolutionists?

On this point it is necessary only to cite the official utterances of the President and Secretary Hay. In his message of January 4, 1904, the President said:—

"I hesitate to refer to the injurious insinuations which have been made of complicity by this government in the revolutionary movement in Panama. They are as destitute of foundation as of propriety. The only excuse for my mentioning them is the fear lest unthinking persons might mistake for acquiescence the silence of mere self-respect. I think proper to say, therefore, that no one connected with this government had any part in preparing, inciting, or encouraging the late revolution on the Isthmus of Panama, and that save from the reports of our military and naval officers, given above, no one connected with this government had any previous knowledge of the revolution except such as was accessible to any person of ordinary intelligence who read the newspapers and kept up a current acquaintance with public affairs."

In his reply of January 5 to the formal statement of Colombia's grievances which General Reyes made to him on December 23, Secretary Hay said:—

"The press in this country is entirely free and as a necessary consequence represents substantially every phase of human activity, interest, and disposition. Not only is the course of the government in all matters subject to daily comment, but the motives of public men are as freely discussed as their acts, and if, as sometimes happens, criticism proceeds to the point of calumny, the evil is left to work its own cure. Diplomatic representatives, however, are not supposed to seek in such sources material for arguments, much less for grave accusations Any charge that this government, or any responsible member of it, held intercourse, whether official or unofficial, with agents of revolution in Colombia, is utterly without justification

"Equally so is the insinuation that any action of this government prior to the revolution in Panama was the result of complicity with the plans of the revolutionists. The department sees fit to make these denials, and it makes them finally."

Were our treaty obligations violated in refusing to aid Colombia to put down the revolution?

It is not only contended but proved by the supporters of the government's conduct, that under the treaty of 1846 the United States was bound to aid Colombia in maintaining her sovereignty only in case an effort were made to attach Panama to a foreign power. Citations from official records show a continuous line of interpretation by our secretaries of state from 1865 to the present time in accord with this dispatch from Secretary Seward to the American minister at Bogota:—

"November 9, 1865.

"SIR —The question which has recently arisen under the thirty-fifth article of the treaty with New Granada, as to the obligation of this government to comply with a requisition of the President of the United States of Colombia for a force to protect the Isthmus of Panama from invasion by a body of insurgents of that country, has been submitted to the consideration of the Attorney-General. His opinion is that neither the text nor the spirit of the stipulation in that article, by which the United States engages to preserve the neutrality of the Isthmus of Panama, imposes an obligation on this government to comply with a requisition like that referred to. The purpose of the stipuation was to guarantee the Isthmus against seizure or invasion by a foreign power only. It could not have been contemplated that we were to become a party to any civil war in that country by defending the Isthmus against another party. As it may be presumed, however, that our object in entering into such a stipulation was to secure the freedom of transit acrosss the Isthmus if that freedom should be endangered or obstructed, the employment of force on our part to prevent this would be a question of grave expediency to be determined by circumstances The department is not aware that there is yet occasion for a decision upon this point."

From the date of that dispatch to the present time this construction has been imposed upon the treaty of 1846 by every diplomatic agent and secretary of state in the American govern-

ment. Furthermore, the Colombian government has itself accepted the same construction, for Mr. Burton, in replying to Secretary Seward's dispatch in 1865, wrote that he had opened up this subject of the construction of the treaty of 1846 with the diplomatic agents and ministers of the Colombian government, and added:—

"The result has been that the Colombian government declares that it does not feel itself authorized by the treaty to require the aid of the United States for the suppression of an insurrection, rebellion, or other disturbance on the Isthmus on the part of the Colombian citizens; not even an invasion by another Colombian state, unless such movement be intended to detach the state of Panama from the Colombian union and to annex it to a foreign power This would seem to leave the Isthmus free to declare itself independent of the United States of Colombia, without the fear of the forced intervention of the United States of America, provided such declaration be not accompanied by the end of annexation to a foreign power."

That was the situation in 1846, as interpreted about twenty years later. The question was a very different one in 1903. The railway which was constructed from ocean to ocean by American capital has thirty-two stations, and at each of these there is a group of population. At one end is Colon with a population of fourteen thousand, and at the other is Panama with a population of twenty thousand. There are warehouses, storehouses, stations, yards, and cars and other property belonging to the railway company scattered along the road's length. In addition are the dredges and machinery of the canal company, which the Canal Commission estimated as worth one million dollars. The American government must consider, when confronted with the question of interrupting transit on the Isthmus, not its obligations merely under the treaty of 1846, but its inherent right to safeguard the great interests and right of American capital invested there. When Colombia sought to use the railway in order to institute civil war, she herself violated the treaty, for civil war would have closed the Isthmus and made necessary American intervention to reopen traffic and keep it open.

COLOMBIA'S USURPING GOVERNMENT.

Was there a constitutional government in Colombia at the time of the Panama revolution?

On this point I shall follow the argument of ex-Secretary Root in his speech in Chicago on February 23, 1904. He claimed

that Panama retained an independent sovereignty as a state first in the republic of New Granada and later in the republic of Colombia, quoting from the different constitutions of those confederations to show that for nearly fifty years Panama "has never voluntarily surrendered her sovereignty." When the new constitution of Colombia was adopted in 1863, Mr. King, the American minister at Bogota, reported to the Secretary of State at Washington that under it "the states comprising the union were vested with absolute and unqualified sovereignty. From them emanated all authority, and without their assent none could be exercised by the federal functionaries of the nation." Under that constitution Panama lived as a sovereign state in coöperation with the other states of Colombia for twenty-three years. In 1885 Rafael Nunez became president. He undertook to govern in disregard of constitutional limitations, and was resisted in many parts of the republic, including Panama. He overcame the resistance and then declared that the "constitution of 1863 no longer exists." He put Panama under martial law and appointed a governor for it and for the other states. He then directed these governors to appoint delegates to a constitutional convention, and these delegates framed the constitution of 1886. The two delegates who represented Panama had never set foot in that state. The new constitution was adopted without compliance with a single one of the requisites prescribed by the constitution of 1863 for its amendment. It robbed the people of Panama of every vestige of self-government. It gave them a governor to be appointed at Bogota, and he in turn appointed all his subordinate administrative officers. The new constitution was never submitted to the people of Panama for approval or rejection. Mr. Root said of the situation at and subsequent to this subjugation: "The people of Panama fought to exhaustion in 1885 to prevent the loss of their liberty, and they were defeated through the action of the naval forces of the United States. Three times since then they have risen in rebellion against their oppressors. In 1895 they arose and were suppressed by force; in 1899 they arose again and for three years maintained a war for liberation, which ended in 1902 through the interposition of the United States by armed force. The rising of November, 1903, was the fourth attempt of this people to regain the rights of which they had been deprived by the usurpation of Nunez."

In 1898 M. A. Sanclamente was elected president, and J. M. Maroquin vice-president, of the republic of Colombia. On July

31, 1900, the vice-president, Maroquin, executed a "coup d'état" by seizing the person of the president, Sanclamente, and imprisoning him at a place a few miles outside of Bogota. Maroquin thereupon declared himself possessed of the executive power because of the absence of the president. He then issued a decree that public order was disturbed, and, upon that ground, assumed to himself legislative power under another provision of the constitution. Thenceforth, Maroquin, without the aid of any legislative body, ruled as the supreme executive, legislative, civil, and military authority in the so-called republic of Colombia. The absence of Sanclamente from the capital became permanent by his death in prison in the year 1902. When the people of Panama declared their independence in November, 1903, no congress had sat in Colombia since the year 1898, except the special congress called by Maroquin to reject the canal treaty, and which did reject it by a unanimous vote, and adjourned without legislating on any other subject. The constitution of 1886 had taken away from Panama the power of self-government and vested it in Colombia. The *coup d'état* of Maroquin took away from Colombia herself the power of government and vested it in an irresponsible dictator.

After the revolution of Panama, General Reyes, in behalf of the Colombian government, made an offer to the American government, through the American minister, to ratify the treaty, either by calling the congress together again or by decree; thus admitting that constitutional government did not exist in Colombia. The question thus placed before the government of the United States then became not one of interest, said Mr. Root, for treaty and canal were secure, but a "question of right, a question of justice, a question of national conscience." The people of Panama were the real owners of the canal route. They had never parted with their title to it, but constituted the federal government its trustee. The trustee was faithless to the trust, had repudiated its obligations, and had seized with the strong hand of military power the rights which it was bound to protect. Mr. Root's conclusion is likely to be that of the American people:—

"The question for the United States was, Shall we take this treaty from the true owner, or shall we take it from the faithless trustee, and for that purpose a third time put back the yoke of foreign domination upon the neck of Panama by the request of that government which has tried to play toward us the part of the highwayman? By all the principles of justice among men and among nations that we have learned from our fathers, and all peoples and all governments should maintain, the revolu-

tionists in Panama were right, the people of Panama were entitled to be free again, the Isthmus was theirs, and they were entitled to govern it, and it would have been a shameful thing for the government of the United States to return them again to servitude."

Was the act of recognition justified by the interests of civilization?

President Roosevelt firmly believed it was. He said in his message of January 4, 1904: "I confidently maintain that the recognition of the republic of Panama was an act justified by the interests of collective civilization. If ever a government could be said to have received a mandate from civilization to effect an object the accomplishment of which was demanded in the interest of mankind, the United States holds that position with regard to the inter-oceanic canal." The civilized world very promptly confirmed this view of our position as the mandatory of civilization when through fifteen of its governments, including those of the leading nations, it recognized the independence of the new republic. Putting all other considerations aside, it is easy to discern that the great force which moved not only the United States government but the governments of the civilized world as a body forward so unanimously in this matter, was self-interest in three forms. First, the self-interest of Panama, which compelled the revolution as the only method of escape from destruction. Seccond, self-interest of the United States, which demands a canal for its commerce and the development of its resources. Third, self-interest of civilization throughout the world. On this point,—that an isthmian canal free to the commerce of the world is an inestimable boon to all mankind,—there is no dissenting voice. By rejecting the new treaty, for the reasons given and in the manner followed, Colombia put herself athwart the pathway of the progress of the world, and the world united to brush her aside. Then, too, there was that sympathy with Panama which always goes forth to a people striving to rid themselves of oppression. As Vattel says: "When a people for good reasons take up arms against an oppressor, it is but an act of justice and generosity to assist brave men in the defence of their liberties."