THE ETHICS OF THE PANAMA QUESTION.

On the 3d of November 1903 the people of Panama revolted against the Government of Columbia, and proclaimed their independence. On the 13th of November the United States recognized the independence of the Republic of Panama, by receiving a Minister from the new Government, and at the opening of the regular session of Congress in December, the President asked the consent of the Senate to a treaty negotiated between our Secretary of State, Mr. Hay, and the Minister of Panama, Mr. Varilla, providing for the construction by the United States of a ship canal across the Isthmus, to be kept by us open neutral and free upon equal terms for the use of all mankind. After long and exhaustive discussion that treaty is about to be confirmed. In the meantime, the Senate by a great majority has approved the recognition of independence by confirming the nomination of William I. Buchanan as Minister from the United States to Panama. The revolutionary leaders have submitted their action to the people of Panama, who have, by a popular vote, given it their unanimous approval, and have elected a constitutional convention, framed and adopted a constitution, chosen a president and congress, and established a republican government according to the forms which find their model in the constitutions of our own Country. In the meantime, also, many other governments have followed the United States in receiving the new republic into the family of Nations. On the 18th of November, five days

after our recognition, France recognized the Republic of Panama; on the 22nd China; on the 27th Austria; on the 30th Germany; and following them Denmark, Russia, Sweden and Norway, Belgium, Nicaragua, Peru, Cuba, Great Britain, Italy, Switzerland, Costa Rica, Japan, Guatemala, Netherlands, Venezuela, Portugal, in the order named.

The independence of Panama, the grant to the United States of the right to construct the canal across the Isthmus, and the assumption by the United States of the duty to construct the canal and to maintain it for the equal benefit of mankind, are accomplished facts. Nothing can do away with them, unless it be some future war of conquest waged againt the liberties of Panama, and at the same time against the rights of the United States held in trust for the commerce of the world.

The conduct of the United States Government in recognizing the independence of Panama, in making the treaty, and in exercising police power over territory traversed by the Panama Railroad and the partly constructed canal, during the period the revolution, has been severely criticised by some of our own citizens, who have said, in substance, that in this business our Government has violated the rules of International Law, has been grasping and unfair, and has, by the exercise of brute force, trampled down the rights of a weaker nation, in violation of those principles of justice which should control the conduct of Nations as of men.

In considering these charges, we may well thrust aside as carrying no weight of authority, the expressions of those who, while they condemn the conduct of our Government, are in favor of the treaty. They curiously reverse the Divine rule, and seem to hate the

sinner while they love the sin ; and their adverse criticism may fairly be ascribed to the exigencies of the pending presidential campaign. Some of them may be sincere, but upon that question they naturally invite the comment made upon Lady Macbeth, that "she might be a lady, but she did not show it by her conduct".

We need not pay very much heed, either, to that class of temperamental and perennial fault-finders whom we have and always will have with us, as an incident of free institutions, who are against every government of which they do not personally form a part, and in whose eyes everything done by others is wrong. This class of our citizens, with slight changes in personnel, would have condemned any course of conduct by our Government, whatever it was, and their condemnation of the particular course followed, merely announces their existence.

Nevertheless, there remain good and sincere men and women who have thought our course to be wrong, and many others, whose character and patriotism entitle them to the highest respect, are troubled in spirit. They would be glad to be sure that our Country is not justly chargeable with dishonorable conduct. May the time never come when such men and women are wanting, or are constrained to remain silent, in America! May the time never come when the conscience of America shall cease to apply the rules of upright conduct to national, as well as to personal life! when our governments feel absolved from the obligation to answer in that forum for conformity to the rules of right, or when material advantage shall be held to excuse injustice! For, if such a time ever does come, the beginning of the end of our free institutions will have come also.

I wish to present some of the fundamental facts bearing upon the question of right in the Panama business, although they have been stated already better than I can state them, with the hope that they may thus reach the attention of some of the good and sincere citizens who are troubled about the matter.

I am not going to discuss technical rules or precedents or questions whether what was done should have been done a little earlier or a little later, but the broad question whether the thing we have done was just and fair.

It frequently happens in affairs of Government that most important rights are created, modified, or practically destroyed by gradual processes, and by the indirect effect of events; and that only an intimate knowledge of the process enables one to realize the change until some practical question arises which requires every one interested to study the subject. If the typical New Zealander, ignorant of our political history, were to read our Constitution and Laws, he would suppose that a presidential elector in the United States is entitled to exercise freedom of choice in his vote for president, and he would be quite certain that we were guilty of gross injustice in the treatment which we should certainly accord to an elector who voted for any one but the candidate of his own party. In forming this judgment, he would be misled by the form and appearance of things which he found upon the statute book, and would misjudge a people who were acting in accordance with the substance and reality of things as they knew them to be. In the same way, they are in error who assume that the relations of Colombia to the other nations of the earth as regards the Isthmus of Panama were, in truth, of unqualified sovereignty and right of

domestic control according to her own will, governed and protected by the rules of international law, which describe the attributes of complete sovereignty; that the relations of Colombia to the people of Panama were, in truth, those appearing in the written instrument called the Constitution of Colombia; or that the rights and duties of the United States in regard to the Isthmus were confined to the simple duty of aiding Colombia to maintain her control over the Isthmus, and the simple right to ask from Colombia, privileges which that Country was entitled to grant or withhold at her own pleasure.

The stupendous fact that has dominated the history and must control the future of the Isthmus of Panama is the possibility of communication between the two oceans. It is possible for human hands to pierce the narrow forty miles of solid earth which separate the Carribbean from the Bay of Panama, to realize the dreams of the early navigators, to make the pathway to the Orient they vainly sought, to relieve commerce from the toils and perils of its nine thousand miles of navigation around Cape Horn through stormy seas and along dangerous coasts with its constant burden of wasted effort and shipwreck and loss of life, and to push forward by a mighty impulse that intercommunication between the distant nations of the earth which is doing away with misunderstanding, with race prejudice and bigotry, with ignorance of human rights and opportunity for oppression, and making all the world kin.

Throughout the centuries since Philip II sat upon the throne of Spain, merchants and statesmen and humanitarians and the intelligent masses of the civilized world have looked forward to this consummation with just an-

ticipations of benefit to mankind. No savage tribes who happened to dwell upon the Isthmus would have been permitted to bar this pathway of civilization. By the universal practice and consent of mankind, they would have been swept aside without hesitation. No Spanish sovereign could, by discovery or conquest, or occupation, preempt for himself the exclusive use of this little spot upon the surface of the earth dedicated by nature to the use of all mankind. No civil society organized upon the ruins of Spanish dominion could justly arrogate to itself over this tract of land, sovereignty unqualified by the world's easement and all the rights necessary to make that easement effective. The formal rules of international law are but declarations of what is just and right in the generality of cases. But where the application of such a general rule would impair the just rights or imperil the existence of neighboring states or would unduly threaten the peace of a continent or would injuriously affect the general interests of mankind, it has always been the practice of civilized nations to deny the application of the formal rule and compel conformity to the principles of justice upon which all rules depend. The Danubian principalities and Greece and Crete, and Egypt, the passage of the Dardanelles, and the neutralization of the Black Sea are familiar examples of limitations in derogation of those general rules of international law which describe the sovereignty of nations.

The Monroe Doctrine itself upon which we stand so firmly is an assertion of our right for our own interest to interfere with the action of every other nation in those parts of this hemisphere where others are sovereign and where we have no sovereignty or claim of sovereignty, and to say if you do thus and so, even by the consent of the sovereign, we shall regard it as

an unfriendly act because it will affect us injuriously. It is said that the Monroe Doctrine is not a rule of international law. It is not a rule at all. It is an assertion of a right under the universal rule that all sovereignty is held subject to limitations in its exercise arising from the just interests of other nations.

By the rules of right and justice universally recognized among men and which are the law of nations, the sovereignty of Colombia over the Isthmus of Panama was qualified and limited by the right of the other civilized nations of the earth to have the canal constructed across the Ithmus and to have it maintained for their free and unobstructed passage.

Colombia and her predecessor, New Granada, have not failed at times, to recognize their position. In 1846, New Granada, through her Secretary of Foreign Relations, Mr. Mallarino, applied to the Government of the United States to enter into a treaty which should protect that Country against the seizure of the Isthmus by other foreign powers. In effect, she acknowledged the right of way and asked the United States to become the trustee of that right which qualified her sovereignty, to maintain it for the equal benefit of all nations and at the same time to protect her against its exercise by them in such a manner as to destroy her sovereignty altogether. After describing acts which he conceived to be undue encroachments by Great Britain in South America, Mallarino said :

> "And if the Usurpation of the Isthmus in its channelizable portion should be added to these encroachments, the empire of American commerce in its strictly useful or mercantile sense, would fall into the hands of the only nation that the United States can consider as a badly disposed rival. It would be perfectly superfluous to mention the political consequences that would be entailed upon America. This dominion or ascendancy would be equally ruinous to the

commerce of the United States and to the nationality of the Spanish American Republics, most direful for the causes of democracy in the new World, and a constant cause of disturbance of the public peace in this, our Continent.

"From these facts and general considerations may be inferred the urgent necessity in which the United States are of interposing their moral influence and even their material strength between the weakness of the new Republics and the ambitious views of the commercial nations of Europe. * * * This end is simply and naturally to be obtained by stipulating in favor of the United States a total repeal of the differential duties as a compensation for the obligation they imposed upon themselves of guaranteeing the legitimate and complete or integral possession of those portions of territory that the universal mercantile interests require to be free and open to all nations. * * * When a treaty containing such a stipulation shall exist between New Granada and the United States, and it could be completed and perfected by a subsequent and supplementary convention, in which the transit of the interoceanic passage should be arranged and its permanent neutrality confirmed, half the plans of Great Britain would of themselves fail and it would no longer be possible for her to encroach upon the Isthmus."

He said he assumed that the United States would in the proposed treaty

"guarantee to New Granada the Isthmus or at least as much of it as was required for the construction of a canal or railroad upon the most favorable route; and moreover that it was important that this guarantee should appear in the treaty as a condition for the right of way and the abolition of the discriminating differential duties, otherwise New Granada would be obliged to grant the same privileges unconditionally to England."

And he appealed to the declaration of the Monroe Doctrine, reiterated by President Polk to the Congress of 1845–6, as the basis of his request.

Upon this appeal, the treaty of December 12th, 1846, between the United States and New Granada was

made and signed in behalf of Colombia by the Secretary Mallarino, whose words I have quoted. The 35th article of the treaty contained the following provision:

> "The Government of New Granada guarantees to the Government of the United States that the right of way or transit across the Isthmus of Panama upon any modes of communication that now exist, or that may be hereafter constructed, shall be open and free to the Government and citizens of the United States. * * * And, in order to secure to themselves the tranquil and constant enjoyment of these advantages, and as an especial compensation for the said advantages and for the favors they have acquired by the 4th, 5th and 6th articles of this treaty, the United States guarantee positively and efficaciously to New Granada by the present stipulation, the perfect neutrality of the beforementioned Isthmus with the view that the free transit from the one to the other sea may not be interrupted or embarrassed in any future time while this treaty exists; and in consequence, the United States also guarantee in the same manner the rights of sovereignty and property which New Granada has and possesses over the said territory."

In transmitting this treaty to the Senate on the 10th of February, 1847, President Polk made these observations:

> "1. The treaty does not propose to guarantee a territory to a foreign nation in which the United States will have no common interest with that Nation. On the contrary, we are more deeply and directly interested in the subject of this guarantee than the New Granada herself or any other Country.
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> "2. The guarantee does not extend to the territories of New Granada generally but is confined to the single province of the Isthmus of Panama, where we shall acquire, by the treaty, a common and co-extensive right of passage with herself.
>
> "3. It will constitute no alliance for any political object, but for a purely commercial purpose in which all the navigating nations of the world have a common interest."

You will perceive that in this transaction New Granada recognized the subordination of her sovereignty to the world's easement of passage by railroad or by canal, and, apprehending that other nations might seek to exercise that right through the destruction of her sovereignty and the appropriation of her territory, she procured the United States to assume the responsibility of protecting her against such treatment. The United States assumed that burden and by way of consideration

1st: The United States received an express grant of the right of way which President Polk described as constituting a "common and co-extensive right of passage with New Granada herself," and as making the United States, "more deeply and directly interested in the subject of this guarantee than New Grarada herself, or any other country",

2d: The United States received a grant of power and assumed a duty herself to keep the transit free and uninterrupted and unembarrassed, and to keep the territory of the transit neutral.

The duties assumed by the United States to maintain neutrality and free passage were undertaken for the benefit of all the world. The right to maintain free passage was, however, not merely for the general benefit, but was specifically declared to be "in order to secure to themselves (the United States) the tranquil and constant enjoyment" of the right of way. The United States assumed the burden of protecting New Granada against an unjust exercise of the world's right of passage. She assumed the correlative duty of safeguarding the just exercise of the world's right of passage and she acquired for herself a specific grant of

the right of way and the power to exercise for her own benefit in that territory the functions of sovereignty which were necessary for the peaceable enjoyment of the interest thus acquired by her.

Both countries have agreed in the construction that this treaty imposed upon the United States no duty towards Colombia to help her put down domestic insurrection. With that form of assault upon the sovereignty of Colombia the United States has had no concern, except when it tended to interfere with free transit, and then the action of the United States has been, not in the exercise of a duty towards Colombia, but in protection of her own rights.

Throughout the half century past since the treaty was made, the United States has been faithful to her obligations. The distinct announcement of her protection and her constantly increasing power have been an adequate barrier against foreign aggression upon the Isthmus. In all the long and monotonous series of revolutions and rebellions in which Colombia from the beginning showed herself wholly incapable of maintaining order, United States sailors and marines have policed the railroad, its terminal cities and its harbors —sometimes by Colombia's request and sometimes without it—prohibiting action sometimes by the forces of the party in power and sometimes by the forces of the party out of power, but always enforcing peace upon the line of transit. In a long and unbroken series of formal binding official Declarations by nearly every Administration for more than half a century, we have committed our Country as a matter of traditional policy to the execution of the trust to protect and control the passage of the Isthmus for the equal uses of all Nations.

It will be observed that one effect of the treaty of

1846 was that foreign powers were to be excluded from the opportunity to construct the canal themselves. It followed from this that if private enterprise should fail to build the canal, the United States assumed the obligation to build it herself. We could not play dog in the manger on the Isthmus. We could not refuse to permit the work to be done by any one else competent to do it and refuse the burden ourselves. The obligation of the United States to build the canal and the obligation of Colombia to permit her to build it, both followed necessarily from the relations and obligations assumed by them in the treaty of 1846.

Private enterprise has failed to build the canal. The great French company organized by de Lesseps, after spending and wasting an incredible amount of treasure and after the sacrifice of thousands of lives, has abandoned hope of completing the undertaking. No private company again will grapple with the colossal enterprise. Other nations are excluded from the attempt by the force of our agreement with Colombia. If the canal is to be built, we must build it.

The United States has answered to that obligation. Again upon the request of Colombia, she entered upon the negotiation of the further treaty described by the Granadian Secretary, Mallerino, in 1846: as "a subsequent and supplementary convention, in which the transit of the interoceanic passage should be arranged and its permanent neutrality confirmed."

Colombia stood to profit more by the building of that canal than any other nation upon earth. Her territory stretching across the northwestern end of South America was without internal communication or unity. Her principal towns upon her Atlantic and her Pacific coasts were separated by ranges of lofty mountains not traversed by any railroad, and for the most part with-

out roads of any kind. The building of a canal would, for the first time, establish practical and easy communication between her different provinces. The work of construction would bring enormous sums to be expended in her territory, and the operation of the canal would set Colombia upon a great highway of the world's commerce with incalculable opportunities for development and wealth. She had acknowledged the world's right to the canal. She had specifically granted the right of way to the United States. She had induced the United States to assume the moral obligation for its construction by excluding all other nations from the Isthmus for her protection. When she came to settle the terms of this "supplementary convention", the detailed arrangements under which this enormous benefit might be conferred upon mankind, and especially upon herself, she demanded to be paid.

Reluctantly, and with a sense that it was an unjust exaction, the United States agreed to pay ten million dollars down and two hundred and fifty thousand dollars per annum in perpetuity—substantially the entire amount exacted by Colombia. We were not going into the enterprise to make money, but for the common good. We did not expect the revenues of the canal to repay its cost, or to receive any benefit from it, except that which Colombia would share to a higher degree than ourselves. Against the hundreds of millions which we were obligating ourselves to expend, Colombia was expected only to permit the use of a small tract of otherwise worthless land already, in substance, devoted to that purpose. We were not seeking a privilege which Colombia was entitled to withhold but settling the method in which the acknowledged right of mankind over a portion of her soil should be exercised, with due regard to her spe-

cial interests. It was not just that we should pay anything, but it was better to pay than to coerce a weaker nation. The treaty was ratified by the Senate, and forwarded to Bogota. At the same time, we arranged that upon the final ratification of the treaty, we should pay to the Panama Canal Company forty million dollars, the entire appraised value of its work upon the canal, in which it had expended nearly two hundred million dollars. The concessions made in the treaty to the Government of Colombia, however, seemed merely to inspire in that Government a belief that there was no limit to the exactions which they could successfully impose. They demanded a further ten million dollars from the Panama Canal Company and upon its refusal, they rejected the treaty.

This rejection was a substantial refusal to permit the canal to be built. It appears that the refusal contemplated not merely further exactions from us but the spoliation of the Canal Company. That Company's current franchise was limited by its terms to the 31st day of October, 1904. There was an extension for six years granted by the President and for which the Company had paid five million francs. These patriots proposed to declare the extension void and the franchise ended and to confiscate the forty million dollars worth of property of the Company and take from the United States for themselves, in payment for it, the forty million dollars we had agreed to pay the Company. The report of the Committee on which the Colombian Senate acted, contained the following:

> "By the 31st of October of next year—that is to say, when the next Congress shall have met in ordinary session—the extension will have expired, and every privilege with it. In that case, the Republic will become the possessor and

> owner, without any need of a previous judicious decision and without any indemnity, of the canal itself, and of the adjuncts that belong to it, according to the contracts of 1878 and 1900.
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> "When that time arrives, the Republic without any impediment, will be able to contract and will be in more clear, more definite and more advantageous possession both legally and materially. The authorizations which would then be given by the next Congress would be very different from those that would be given by the present one."

By becoming a party to this scheme, we might indeed have looked forward to the time when the appetite of Columbia being satisfied at the expense of the unfortunate stockholders of the French Company, we could proceed with the work; but such a course was too repugnant to the sense of justice that obtains in every civilized community to be for a moment contemplated. We had yielded to the last point, beyond reason and justice, in agreeing to pay for a privilege to which we were already entitled and we could not, with self-respect, submit to be mulcted further. We could negotiate no further. Rejection of the treaty was practically a veto of the canal. Every effort was made to bring Columbia to a realization of what it was that she was doing; the effort was in vain, and on the 31st of October, when the Columbian Congress adjourned, the inchoate treaty had expired by limitation.

The questions presented to the United States by this rejection were of the gravest importance. Lewis Cass, Secretary of State, said in 1858:

> "The progress of events has rendered the interoceanic route across the narrow portion of Central America vastly important to the commercial world, and especially to the United States, whose possessions extend along the Atlantic and the Pacific coasts, and demand the speediest and easiest modes of communication. While the rights of sovereignty of the States occupying this region should always be re-

spected, 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 pretention that these avenues of trade and travel belong to them and that they choose to shut them, or what is almost equivalent, to encumber them with such unjust relations as would prevent their general use."

The time had apparently come to stand upon this declaration or abandon the canal. The question was, should we submit to be deprived of the Canal at the will of Colombia, whose sovereignty was justly subject to the world's right of passage? Should we continue to maintain upon the Isthmus that feeble sovereignty whose existence had depended for half a century upon our protection, in order that it might still bar the way of the world's progress and the exercise of our just rights? Should we prepare to protect that sovereignty in its scheme of spoliation, against the justly indignant protests of France surely coming to the support of the stockholders of the French canal company? Or, should we say to Colombia, you have no right to prevent the construction of this canal; you are bound to consent to it upon reasonable terms; by your request we have assumed a position in which we are bound to build it for the use of the nations and in which we are entitled to build it for our own interest; and we shall now proceed to build it with due regard for your interests, whether you agree upon the terms and conditions or not.

I think that Secretary Cass answered the question forty-five years ago. In Europe a concert of the powers would have made short work of the question.

In Central America they would have made short work of it but for the Monroe Doctrine, to which New Granada appealed, and the protection which we guaranteed to her under the treaty of 1846. By the assertion of that Doctrine and the engagements of that treaty we took the responsibility upon ourselves alone, to do for civilization what otherwise all the maritime powers would have united in requiring; it was for us alone to act; and I have no question that our right and duty were to build the canal, with or without the consent of Columbia.

These were the conditions existing when the revolution of November 3rd happened. To an understanding of that revolution a knowledge of the character and history of Panama is essential. Some uninformed persons have assumed that it was merely a number of individual citizens of Colombia living in the neighborhood of the proposed canal who combined to take possession of that part of Colombian territory and set up a Government of their own. No conception could be more inadequate. The Sovereign State of Panama was an organized Civil Society possessed of a territory extending over 400 miles in length from Costa Rica on the west to the mainland of South America on the east. It had a population of over 300,000, the greater part of whom lived in the western part of the Country, towards Costa Rica, and farthest removed from South America. Between the inhabited part of this territory and the inhabited part of Colombia, stretched hundreds of miles of tropical forest so dense as to be impassable by the ordinary traveller, so that there was no communication by land between the two countries. The only intercourse was by long sea voyages, as if Panama were a distant Island; and the journey from the

Isthmus to the Capitol of Colombia was longer in time than from the Isthmus to Washington.

Panama was not an original part of Colombia, or of New Granada, but obtained its own independence from Spain and established its own Government in November, 1821, and thereafter voluntarily entered the Granadian confederation. When that confederation was broken up into Venezuela, Ecuador and New Granada in 1832, Panama remained with New Granada, and so continued until the year 1840 when she again became independent and remained a separate sovereignty until 1842. She then returned to New Granada and remained a part of that country until 1855, when by amendment to the Constitution these provisions went into effect:

> "ART. 1. The territory which comprises the provinces of the Isthmus of Panama, to wit, Panama, Ezuero, Veraguas and Chiriqui, form a sovereign, federal, integral part of New Granada under the name of the State of Panama.
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> "ART. 3. The State of Panama is subject to that of New Granada in the matters which are here mentioned:
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> "1. All matters concerning foreign relations;
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> "2. Organization and service of the regular army and of the marines;
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> "3. Federal finances.
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> "4. Naturalization of foreigners.
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> "5. Official weights, balances and measures;
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> "ART. 4. In all other matters of legislation and administration, the State of Panama shall legislate freely in the manner it considers proper in accordance with the rules of practice of its own constitution."

Since that time, now nearly fifty years ago, the State of Panama has never voluntarily surrendered her sovereignty. In 1858, in 1860 and 1861, new confederations were formed in which Panama became a contracting party. In 1863 a new Constitution was formed, the first two articles of which were as follows:

"ART. 1. The Sovereign States of Antioquia, Bolivar, Boyaca, Cauca, Cundinamarca, Magdalena, Panama, Santander and Tolima, created respectively by the acts of the 27th of February, 1855, 11th of June, 1856, 13th of May, 1857, 15th of June of the same year, 12th of April, 1861 and 3rd of September of the same year, unite and confederate forever, consulting their external security and reciprocal aid, and form a free, sovereign and independent nation under the name of the 'United States of Colombia'.

"ART. 2. The said States engage to aid and defend themselves mutually against all violence that may injure the sovereignty of the Union or that of the States."

This Constitution undertook to distribute general and local powers between the federal and the State Governments upon the principles followed in the Constitution of the United States. But it provided :

"ART. 25. Every act of the National Congress or of the executive power of the United States, which shall violate the rights warranted in the 15th article, or attack the sovereignty of the States, shall be liable to abrogation by the vote of the latter expressed by the majority of their respective legislatures."

And it provided that it could be amended only in the following manner :

"1. That the amendments be solicited by the majority o the legislatures of the States :

2. That the amendments be discussed and approved in both houses, according to what has been established for the enactment of laws ; and

3. That the amendments be ratified by the unanimous votes of the Senate of Plenipotentiaries, each state having one vote.

It may also be amended by a convention called therefor by the Congress on the application of the whole of the legislatures of the States, and composed of an equal number of deputies from each State."

Under this Constitution Mr. King, the American Minister at Bogota, reported to the Secretary of State at Washington :

> "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 the sovereign State of Panama lived in confederation with the other States of Colombia for twenty-three years, until the year 1886. She never legally lost her rights under that Constitution, but she was deprived of them in fact by force in the manner which I shall now describe.

In the year 1885 Rafael Nunez having been elected president of the Confederation of Co ombia under the Constitution of 1863, undertook to govern in disregard of constitutional limitations, and was resisted in many parts of Colombia, including Panama. The resistence was overcome and when that was accomplished Nunez declared "The Constitution of 1863 no longer exists." He put Panama under martial law, not during the civil war but after its close and appointed a Governor of the State. He also appointed Governors for the other States in the Confederation. He then directed these Governors to appoint delegates to a Constitutional convention ; and the delegates thus appointed framed what is known as the Constitution of 1886. The two delegates appointed to represent Panama in this Convention were residents of Bogota. Neither of them had ever resided in Panama, and one of them never had set foot in Panama. The pretended Constitution thus framed by the appointees of Nunez was declared to be adopted without compliance with a single one of the requisites prescribed by the Con-

stitution 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 by the President at Bogota, and he, in turn, appointed all the administrative officers of the Department. It left to the other States their legislatures but it took away from Panama its legislature and subjected the Isthmus directly in all things to the Legislative authority of the Congress at Bogota. It provided that the President might at any time in case of civil commotion declare the public order to be disturbed, and that he should thereupon have authority to issue decrees having the force of legislative enactments. It gave him absolute power over the press and power to imprison or expatriate any citizen at will. It took away the property, the powers, the corporate existence, the civil organization of the State, and placed the property and the lives of its people absolutely under the authority and power of a single dictator in a distant capital with which there was no communication by land, and which it required longer to reach than it did to reach the city of Washington. This pretended Constitution was never submitted to the people of Panama for their approval or rejection. It was never consented to by them. Our Minister at Bogota, Mr. King, closed his despatch describing the new instrument with these words:

"No generous mind can contemplate the disasters which have befallen this people, or meditate on the ills that may flow from their reckless experiment of violent political change, without feeling a deep sorrow for the pains endured by a weak and long-suffering race, who mourn the destruction of their chartered rights as the loss of a cherished freedom that must be recovered at the cost of every peril."

In an address made by President Nunez to this convention of his own appointees he indicated clearly the way in which he proposed to make the new constitution effective in Panama. He said:

> "To what has been stated is added the necessity of maintaining for some time a strong army which shall serve as a material support to the acclimatization of peace which cannot be produced instantaneously by a system of government little in harmony with the defective habits acquired in so many years of error. The State of Panama alone requires a large and well paid garrison, in order that acts may not again occur endangering our sovereignty; without such precaution excluding the most certain one, which is the prudent cultivation of our relations with the North American Government, which has just given us clear evidence of its good faith."

The evidence of good faith to which he referred was that our armed forces had just turned the Isthmus over from the control of the troops of Panama to the control of the troops of Nunez; and the meaning was that he intended to hold the people of Panama subject by force of arms and the aid of the United States.

In May 1886, our Consul at Panama reported to the State Department:

> "The people of the Isthmus are ground down by excessive taxation, and they fear to acquire property lest they shall not only be robbed by the tax gatherers but also imprisoned to cloak the robbery under a false charge. At the present time the revenue derived from the Cities of Panama and Colon and intermediary Villages is at the rate of one million dollars a year. Not one-tenth of this revenue is spent for the benefit of the people. It is used to keep the forces to keep them in subjection."

On the 24th of December, 1886, four months after the promulgation of the Constitution, he reported:

"Three-fourths of the people of this Isthmus desire separation and the independence of the extinguished State of Panama. They feel but little more affection for the Governor at Panama than the Poles did forty years ago for their masters at St. Petersburg. They would revolt if they could get arms and if they felt that the United States would not interfere."

A signed article published in December last in the newspaper "El Relator" of Bogota, sums up the story of oppression and spoliation under which the people of Panama have suffered during these recent years. The facts which the writer states appear also spread at large in numerous reports upon the files of our State Department. He says:

"When the Isthmus in 1821 had sealed its independence and had incorporated itself spontaneously to great Colombia, undoubtedly it had the conviction that we would not annul its rights and its liberty as a nation; it thought that we would always respect the integrity of its own government. Whether we have betrayed or not the confidence that the Isthmians had in our country, the history of the last twenty years and the work of inequity and spoiling realized in Panama, will answer.

"We have converted the Lords and Masters of that territory into Parias of their native soils. We have cut off their rights and suppressed all their liberties unexpectedly. We have robbed them of the most precious faculty of a free people—that of electing their mandataries; their legislators, their judges.

"We have restricted for them the right of suffrage; we have falsified the count of votes; we have made prevalent over the popular will, the will of a mercenary soldiery and that of a series of employees entirely strange to the interests of the Department; we have taken away from them the right of law making and as a compensation we have put them under the iron yoke of exceptional laws; State, Provinces and Municipalities have lost entirely the autonomy which they were enjoying formerly. * * *

"In towns of a cosmopolitan character of the Isthmus, we did not found any national schools where children could

learn our religion; our language, our history and how to love their country. In the face of the world we have punished with imprisonment, with expulsion, with fines and whippings the writers for the innocent expression of their thought. Since December 1884 to October 1908 the Presidents, Governors, Secretaries, Prefects, Mayors, Chiefs of Police, Military Chiefs, Officials, and Soldiers, Inspectors of Police, the Police itself, Captains and Surgeons of Harbors, Magistrates, Judges of all descriptions, State Attorneys, everybody came from the high plains of the Andes and from other parts of the Republic to impose on the Isthmus the will the law, or the whims of the more powerful, to sell justice or speculate with the Treasury. This series of employees similar to an octopus with its multiple arms was sucking the blood of an oppressed people and was devouring what only the Panamans had right to devour. We have made of the Isthmus a real military Province and when this nation of three hundred and fifty thousand souls had men of continental reputation like Justo Arosemana, legislators of the first order and of an irresistible popularity like Pablo Arosemana and like Gil Colunje; men of talent like Ardila; brilliant diplomats like Hurtado and scientific celebrities of European reputation like Sosa, we leave them aside, we relegate them in contempt and in forgetfulness instead of putting them at the head of the Isthmus in order to quench the thirst of equity and justice and satisfy the legitimate aspirations of all the Panamans. Such a way of proceeding has wounded the pride, the dignity and the patriotism of all the intellectual people of the Isthmus, and has provoked and developed the hatred and the anger of the popular mass."

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. The rejection of the canal treaty by the Bogota Congress was the final and overwhelming injury to the interests of Panama; the conclusive evidence of indifference to her welfare and disregard of her wishes; and it also created the opportunity for success in her persistent purpose to regain civil liberty; for it was plain that under the strained relations created by that rejection, the United States naturally would not exercise her authority again upon the Isthmus as she had exercised it before to aid the troops of Colombia. She was under no obligation to do so, and she could not do so without aiding in the denial of her own rights and the destruction of her own interests. Upon that the people of Panama relied in their last attempt, and they relied upon it with reason.

In the meantime there had been a curious grafting of usurpation upon usurpation at Bogota. In 1898 M. A. Sanclamente was elected President, and J. M. Maroquin, Vice-President, of the Republic of Colombia. It is true that there was no freedom of election. Our Minister had reported of a preceding election: "None but the soldiers, police and employees of the Government voted, thus making the victory of the Government complete"; but there was a form of election, and Sanclamente became the only President there was, and Maroquin the Vice-President. Article 24 of the Constitution of 1886 provided:

> "The Vice-President of the Republic shall perform the duties of the executive office during the temporary absence of the President. In case of the permanent absence of the President, the Vice-President shall occupy the office of the President during the balance of the time for which he was elected."

On the 31st of July, 1900, the Vice-President, Maroquin, executed a *coup-de-etat* 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 which I have already cited. 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 last, 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-de-etat* of Maroquin took away from Colombia herself the power of government and vested it in an irresponsible dictator.

The true nature of the government against which Panama rebelled is plainly shown by the proposals to the United States by the Bogota government upon receiving the first news of the revolution. On the 6th of November the United States Minister at Bogota, Mr. Beaupré, telegraphed to Mr. Hay:

> "Knowing that the revolution has already commenced in Panama, General Reyes says that if the Government of the United States will land troops to preserve Colombian

> sovereignty and the transit of the Isthmus, if requested by the charge d'affairs of Colombia, this Government will declare martial law and by virtue of vested constitutional authority, when public order is disturbed, will approve by decree the ratification of the canal treaty as signed; or, if the Government of the United States prefers, will call extra session of Congress with new and friendly members next May to approve the Treaty."

On the 7th of November, Mr. Beaupré telegraphed to Mr. Hay:

> "General Reyes leaves next Monday for Panama invested with full powers. He has telegraphed chiefs of the insurrection that his mission is to the interests of Isthmus. He wishes answer from you before leaving to the inquiry in my telegram of yesterday, and wishes to know if the American Commander will be ordered to co-operate with him and with new Panama government to arrange peace and the approval of Canal Treaty, which will be accepted on condition that the integrity of Colombia be preserved. He has telegraphed President of Mexico to ask the Government of the United States and all the countries represented at the Pan-American Conference to aid Colombia to preserve her integrity. The question of the approval of the Treaty mentioned in my telegram yesterday will be arranged in Panama; he asks that before taking definite action, you will await his arrival there, and that the Government of the United States in the meantime preserve the neutrality and transit of the Isthmus, and do not recognize the new Government."

The General Reyes of these dispatches is now the President elect of Colombia. Upon reading them who can fail to see that there was no constitutional government in Colombia; that no government of law protected the people of Panama and their interests against the will of an arbitrary and foreign power; that the deliberations and unanimous action of the Special Congress at Bogota had been a sham and a pretence; that Panama's rights; that the rights of the United States; that the world's rights to the passage of the

Isthmus; had been the subject of disingenuous juggling at the hands of successful adventurers and not of the fair expression of a free nation's will.

When these dispatches were received the die was not cast on the Isthmus; the United States had not recognized the new Republic of Panama; she had assumed no obligations towards the leaders of the new movement or towards their followers; Colombia and Panama then both held out to us the offer of the right and opportunity to build the Canal. Colombia said, "We will ratify the treaty—we will ratify it by decree, or we will call a Congress selected for the purpose of ratifying the treaty as the preceding Congress was selected for the purpose of rejecting it—if you will preserve our integrity." Panama said, "Recognize our independence, and the treaty follows of course, for the building of the Canal is our dearest hope." There was no question of interest on the part of the United States; the treaty was secure; the canal was secure; but there was a question of right, a question of justice, a question of national conscience to be dealt with. What was the duty of the United States toward the people of Panama and the dictator at Bogota?

The people of Panama were the real owners of the canal route: it was because their fathers dwelt in the land, because they won their independence from Spain, because they organized a civil society there, that it was not to be treated as one of the waste places of the earth. They owned that part of the earth's surface just as much as the State of New York owns the Erie Canal. When the Sovereign State of Panama confederated itself with the other states of Colombia under the constitution of 1863 it did not part with its title or its substantial rights, but constituted the federal gov-

ernment its trustee for the representation of its rights in all foreign relations, and imposed upon that government the duty of protecting them. The trustee was faithless to its trust; it repudiated its obligations without the consent of the true owner; it seized by the strong hand of military power the rights which it was bound to protect; Colombia itself broke the bonds of union and destroyed the compact upon which alone depended its right to represent the owner of the soil. 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? There was no provision of our treaty with Colombia which required us to answer to her call, for our guaranty of her sovereignty in that treaty relates solely to foreign aggression. There was no rule of international law which required us to recognize the wrongs of Panama or the justice of her cause, for international law does not concern itself with the internal affairs of states. But I put it to the conscience of the American people who are passing judgment upon the action of their Government, whether the decision of our President and Secretary of State and Senate was not a righteous decision.

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 revolutionists 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.

It is hardly necessary to say now that our Government had no part in devising, fomenting, or bringing about the revolution on the Isthmus of Panama. President Roosevelt said in his message to Congress of January 4th, 1904:

> "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 naval and military 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."

The people of the United States, without distinction of party, will give to that statement their unquestioning belief.

All the world knew that there would be a rising by the people of Panama if the Colombian Congress adjourned without approving the treaty, as it did adjourn on the 31st of October. The newspapers of the United States were filled with statements to that effect, and our State and Navy Departments could not fail to be aware of it. They took the same steps they had always taken under similar circumstances to have naval vessels present to keep the transit open and protect American life and property. If any criticism is to be made upon their course, it is that there was too little rather than too much prevision and preparation. There was no naval vessel of the United

States at the City of Panama, and there were no armed forces of the United States there when the rising occurred. There was one small vessel at Colon which was able to land a force of forty-two marines and blue jackets; that was the entire force which the United States had on the Isthmus at the time of the revolution. They were landed at Colon as our troops had many times before been landed, and they were landed under these circumstances: On the morning of November 3rd, the day of the rising at Panama about 450 Colombian troops landed at Colon and their two generals proceeded by rail to the City of Panama where they were arrested and placed in confinement by the insurgents, who had been joined by all the Colombian troops on the Isthmus except the 450 just landed, and who had a force of 1500 men under arms. On the morning of the next day, the 4th of November, the remaining commander of this body of Colombian troops in Colon sent a notice to the American Consul that if the officers who had been arrested by the insurgents in Panama the evening before were not released by two o'clock P. M. he would open fire on the town of Colon and kill every United States citizen in the place. There was then no American armed force of any description on the soil of the Isthmus. The Nashville was in the Harbor. The American Consul appealed to the Commander of the Nashville for protection, and he landed the 42 marines and blue jackets. They took possession of the shed of the Panama Railroad Company, a stone building capable of defense, collected there the American men residing in Colon, sent the American women and children on board of a Panama Railroad steamer and a German steamer which were lying at the dock, and prepared to receive

the threatened attack. The building was surrounded by the Colombian troops, and for an hour and a half this little force stood to its arms ready to fire and expecting to receive the threatened and apparently intended attack of ten times their number. Then cooler judgment prevailed with the Colombian officers and the tension was relieved. On the following day a renewal of the threatening attitude of the Colombian troops led to a reoccupation of the railroad shed and a return of the women and children to the steamers; but again the danger passed without conflict; and on the evening of the second day, the 5th of November, after conferences with the insurgent leaders, in which the American officers took no part, the Colombian troops boarded a Colombian ship and sailed away from the Harbor of Colon leaving no Colombian force on the Isthmus. The Commander of the Nashville closes his report of these occurrences in these words:

> "I beg to assure the Department that I had no part whatever in the negotiations that were carried on between Colonel Torres and the representatives of the Provisional Government; that I landed an armed force only when the lives of American citizens were threatened, and withdrew this force as soon as there seemed to be no ground for further apprehension of injury to American lives and property; that I relanded an armed force because of the failure of Colonel Torres to carry out his agreement to withdraw and announced intention to return; and that my attitude throughout was strictly neutral as between the two parties, my only purpose being to protect the lives and property of American citizens and to preserve the free and uninterrupted transit of the Isthmus."

Objection has been made that owing to American direction the Panama Railroad Company refused to transport the 450 Colombian soldiers to Panama to

attack the 1,500 insurgents in arms there, and that the officers of the American Government were directed to prevent any troops of either party from making the line of the Railroad the theatre of hostilities; but this was no new policy devised or applied for this occasion; and it was impartial as to both parties to the controversy. The insurgents were anxious that the transportation should be given, for they outnumbered the Colombians more than three to one, and when it was refused they asked for transportation for themselves to attack the Colombians in Colon, and that was refused. The year before a communication had been sent to the Commander of the Colombian forces and the Commander of the Insurgent forces on the Isthmus in these words:

"U. S. S. CINCINNATI, September 19, 1902.

DEAR SIR:—I have the honor to inform you that the United States naval forces are guarding the railway trains and the line of transit across the Isthmus of Panama from sea to sea, and that no persons whatever will be allowed to obstruct, embarrass or interfere in any manner with the trains or the route of transit. No armed men except forces of the United States will be allowed to come on or use the line.

All of this is without prejudice or any desire to interfere in domestic contentions of the Colombians.

Please acknowledge receipt of this communication.

With assurances of high esteem and consideration, I remain,

Very respectfully,

T. C. McLEAN,

Commander U. S. N., Commanding."

The policy embodied in this official notice of 1902 was the same policy followed in November, 1903, and none other; it was the outcome of the experience

gained during the long course of warfare and the painful experience of property destroyed and traffic suspended, which showed that if the rights of the United States on the Isthmus of Panama were to be protected they must be protected by the United States itself insisting that its right of way should not be made the field of battle; as it had been in 1885, when Colon was burned with the railroad terminals & wharves, when Panama was captured, track was torn up, cars were broken open, telegraph wires were cut and armored trains were a necessity. The warrant for the execution of that policy is the right of self-protection. The things done by our officers might not have been permissible in the territory of a country of strong and orderly government possessing and exercising the power to prevent lawless violence and to protect the lives and property of citizens and foreigners alike; but action of this character is, according to the universal rules obtaining among civilized nations, not only permissible, but a duty of the highest obligation in countries whose feeble governments exercise imperfect control in their own territory and fail to perform the duties of sovereignty for the protection of life and property. The armed force of American sailors who during the past few weeks have been protecting American life and property in the friendly capital of Corea have not been making war upon that power. The expeditionary force which marched to Peking under Chaffee in the summer of 1900, and carrying the Capital of China by assault, rescued the residents of the American Legation, was not making war upon that nation, which relies with just confidence upon our constant friendship. In that category of incapacity to

protect the rights of others, Colombia has placed herself as to the Isthmus of Panama by the record of the past years. She could not maintain order upon the Isthmus because she did not seek to maintain justice; she could not command respect for her laws because she had abandoned the rule of law and submitted to the control of an arbitrary dictator. The right of self-protection for American interests rested upon these facts emphasized and enforced by the grant of power in the treaty of 1846, and by Colombia's own appeals to the American Government to intervene for the maintenance of order.

It was not the neutral force of forty-two marines and blue jackets, or anything that the American Government or American officers said or did, that led the 450 Colombians to retire from Colon; it was the fact that they found themselves alone among a hostile and unanimous people with an overwhelming insurgent force in arms against them which left no alternative but capture or retreat. The recognition of independence and the treaty with Panama are the real grounds of Colombia's complaint, and upon the justice of those acts America stands, fairly, openly, with full disclosure of every step taken and every object sought.

Upon the firm foundation of that righteous action, with the willing authority of the lawful owners of the soil, we will dig the canal, not for selfish reasons, not for greed of gain, but for the world's commerce, benefitting Colombia most of all. We shall not get back the money we spend upon the canal any more than we shall get back the money we have expended to make Cuba a free and independent Republic, or the money we have ex-

pended to set the people of the Philippines on the path of ordered liberty and competency for self-government. But we shall promote our commerce, we shall unite our Atlantic and Pacific coasts, we shall render inestimable service to mankind, and we shall grow in greatness and honor and in the strength that comes from difficult tasks accomplished and from the exercise of the power that strives in the nature of a great constructive people.