

CHAPTER XXXVIII

HOW THE UNITED STATES ACQUIRED THE RIGHT TO DIG THE PANAMA CANAL*

FORMER PRESIDENT ROOSEVELT'S OWN VERSION OF HIS NEGOTIATIONS WITH COLOMBIA—DEALINGS WITH THE FRENCH COMPANY—COLOMBIA REJECTS HAY-HERRAN TREATY—REVOLUTION AT PANAMA A FOREGONE CONCLUSION—AMERICAN NAVAL FORCES KEEP TRANSIT OPEN AND PREVENT COLOMBIAN TROOPS FROM LANDING—NEW REPUBLIC RECOGNIZED AND TREATY CONCLUDED WITH IT—UNITED STATES OFFERS COMPENSATION TO COLOMBIA THROUGH A TRIPARTITE TREATY, WHICH COLOMBIA REJECTS.

BY THEODORE ROOSEVELT

NO OTHER great work now being carried on throughout the world is of such far-reaching and lasting importance as the Panama Canal. Never before has a work of this kind on so colossal a scale been attempted. It is worth while to remember just how it was that America won for itself and the world the right to do a world-job which had to be done by some one, and the doing of which by anyone else would have been not merely a bitter mortification but a genuine calamity to our people.

On December 7, 1903, and again on January 4, 1904, as President of the United States, in messages to the two houses of Congress, I set forth in full and in detail every essential fact connected with the recognition of the Republic of Panama, the negotiation of a treaty with that Republic for building the Panama Canal, and the actions which led up to that negotiation—actions without which the canal could not have been built, and would not have been even begun. Not one important fact was omitted, and no fact of any importance bearing upon the actions or negotiations of the representatives of the United States not there set forth has been, or ever will be, discovered, simply because there is none to discover. It must be a matter of pride to every honest American, proud of the

good name of his country, that the acquisition of the canal and the building of the canal, in all their details, were as free from scandal as the public acts of George Washington and Abraham Lincoln.

The facts were set forth in full at the time in the two messages to which I have referred. I can only recapitulate them briefly, and in condensed form. Of course there was at the time, and has been since, much repetition of statements that I acted in an "unconstitutional" manner, that I "usurped authority" which was not mine. These were the statements that were made again and again in reference to almost all I did as President that was most beneficial and most important to the people of this country, to whom I was responsible, and of whose interests I was the steward. The simple fact was, as I have elsewhere said, that when the interest of the American people imperatively demanded that a certain act should be done, and I had the power to do it, I did it unless it was specifically prohibited by law, instead of timidly refusing to do it unless I could find some provision of law which rendered it imperative that I should do it. In other words, I gave the benefit of the doubt to the people of the United States, and not to any group of bandits, foreign or domestic, whose interests happened to be adverse to those of the people of the United States. In my judgment, history had taught the

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lesson that the President has very great powers if he chooses to exercise those powers; but that, if he is a timid or selfish man, afraid of responsibility and afraid of risks, he can of course manufacture ingenious excuses for failure to exercise them. At a great crisis in American history Mr. Buchanan had shown himself to belong to the latter type of President; Mr. Lincoln had represented the other type, the type which gave the people the benefit of the doubt, which was not afraid to take responsibility, which used in large fashion for the good of the people the great powers of a great office. I very strongly believed that Abraham Lincoln had set the example which it was healthy for the people of the United States that other Presidents should follow.

For many years prior to 1903 our Government had been negotiating with foreign powers to provide for the building of a Panama Canal. By 1902, on the conclusion of the Hay-Pauncefote Treaty, we had cleared the way sufficiently to enable Congress to pass an Act actually providing for the construction of a canal across the isthmus. By this Act the President was authorized to secure for the United States the property of the French Panama Canal Company and the perpetual control of a strip of territory across the Isthmus of Panama from the Republic of Colombia within a reasonable time and at a reasonable price, and, if the endeavor failed, the adoption of the Nicaragua route was authorized.

In October and November, 1903, events occurred on the Isthmus of Panama which enabled me, and which made it my highest duty to the people of the United States, to carry out the provisions of the law of Congress. I did carry them out, and the canal is now being built because of what I thus did. It is also perfectly true that, if I had wished to shirk my responsibility, if I had been afraid of doing my duty, I could have pursued a course which would have been technically defensible, which would have prevented criticism of the kind that has

been made, and which would have left the United States no nearer building the canal at this moment than it had been for the preceding half-century. If I had observed a judicial inactivity about what was going on at the isthmus, had let things take their course, and had then submitted an elaborate report thereon to Congress, I would have furnished the opportunity for much masterly debate in Congress, which would now be going on—and the canal would still be fifty years in the future.

The interests of the American people demanded that I should act just exactly as I did act; and I would have taken the action I actually did take even though I had been certain that to do so meant my prompt retirement from public life at the next election; for the only thing which makes it worth while to hold a big office is taking advantage of the opportunities the office offers to do some big thing that ought to be done and is worth doing.

Under the terms of the Act the Government finally concluded a very advantageous agreement with the French Canal Company. The French Company had spent enormous sums on the isthmus. We felt justified in paying the company only a very small fraction of what it had thus spent. The treaty we made was advantageous to us in a very high degree, and we got what in value was much more than what we paid for it; but the French Company did get something, and if we had not stepped in it would have gotten absolutely nothing. Every step taken by the Government in connection with its negotiations with the French Company and the payment to its official representatives in accordance with the agreement entered into was taken with the utmost care, and every detail has been made public. Every action taken was not merely proper, but was carried out in accordance with the highest, finest, and nicest standards of public and governmental ethics. Doubtless in Paris, and perhaps to a lesser extent in New York, there were speculators who bought and sold in the stock market with a view to the varying

conditions apparent from time to time in the course of the negotiations, and with a view to the probable outcome of the negotiations. This was precisely what speculators did in England in connection with the outcome of the Battle of Waterloo, and in our own country in connection with Abraham Lincoln's issuance of the Emancipation Proclamation and other acts during the Civil War.

The rights of the French Company having been acquired, and the difficulties caused by our previous treaties having been removed by the Hay-Pauncefote Treaty, there remained only the negotiations with the Republic of Colombia, then in possession of the Isthmus of Panama. Under the Hay-Pauncefote Treaty it had been explicitly provided that the United States should build, control, police, and "protect" (which incidentally means to fortify) the canal. The United States thus assumed complete responsibility for, and guaranteed the building of, the canal. Nearly fifty years before, our Government had announced that it would not permit the country in possession of the isthmus "to close the gates or interfere" with opening one of the "great highways of the world," or to justify such an act by the pretension that this avenue of trade and travel belonged to that country and that it chose to shut it. We had always insisted upon the doctrine thus declared, and at last the time had come when I could reduce it to action. We negotiated with the representatives of Colombia a treaty for building the canal, a treaty which granted to Colombia even greater advantages than were subsequently granted to the Republic of Panama, a treaty so good that after it had been rejected by Colombia, and after we had recognized Panama, Colombia clamored for leave to undo the past and enter into the treaty. But the Colombian Government, for reasons which, I regret to say, were apparently very bad indeed, declined to consummate the treaty to which their representatives had agreed. The Isthmus of Panama was then a part

of the Colombian Republic, and the representatives of Panama in the Colombian Legislature at once warned Colombia that the people of Panama would not submit quietly to what they regarded as an utter ignoring of their vital interests. We also, courteously and diplomatically, but emphatically, called the attention of the Colombia representatives to the very serious trouble they were certain to bring upon themselves if they persisted in their action. I felt very strongly that the position that the one-time Secretary of State, Cass, had taken nearly fifty years before was the proper position, and that the United States would be derelict to its duty if it permitted Colombia to prevent the building of the Panama Canal. I was prepared, if necessary, to submit to Congress a recommendation that we should proceed with the work in spite of Colombia's opposition, and indeed had prepared a rough draft of a message to that effect, when events on the isthmus took such shape as to change the problem.

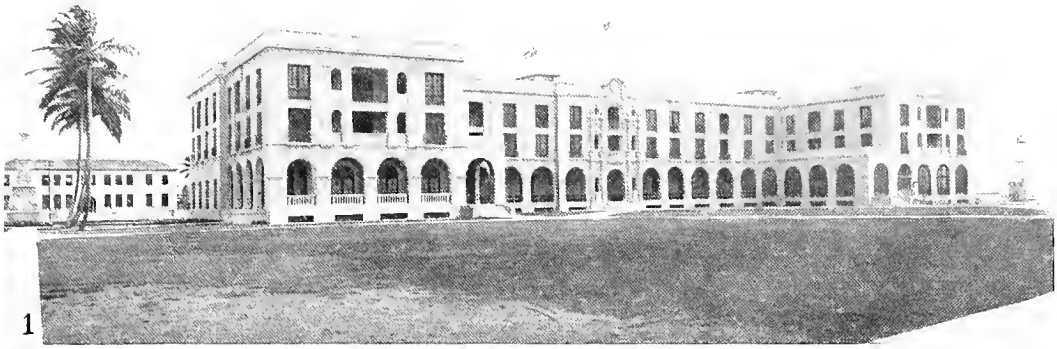
The isthmus was seething with revolutionary spirit. The central government of the Republic of Colombia was inefficient and corrupt. Lawlessness had long been dominant in every branch. During a period of something like seventy years there had been only one or two instances in which a president had served out his term. The republic had repeatedly undergone internal convulsions which completely changed its aspect. Our Government first entered into a treaty with the possessors of the isthmus of Panama in 1846. At that time the nation with which we treated was known as New Granada. After a while New Granada split up and the Republic of Colombia, another confederation, took its place; and Panama was at one time a sovereign state and at another time a mere department of the consecutive confederations known as Colombia and New Granada. In addition to scores of revolutions which affected successively New Granada and Colombia as a whole, the Isthmus of Panama during fifty-seven years saw fifty-three revolutions,

rebellions, insurrections, civil wars, and other outbreaks; some of the revolutions being successful, some unsuccessful; one civil war lasting nearly three years, and another nearly a year. Twice there had been attempted secessions of Panama, and on six different occasions the marines and sailors from United States war-ships were forced to land on the isthmus in order to protect property and to see that transit across the isthmus was kept clear, a duty we were by treaty required to perform, for by treaty we already possessed and exercised on the isthmus certain proprietary rights and sovereign powers which no other nation possessed. On four different occasions the Government of Colombia itself requested the landing of troops to protect its interests and to maintain order on the isthmus—the order which it was itself incompetent to maintain. On several different occasions only the attitude of the United States prevented European powers from interfering on the isthmus. In short, Colombia had shown itself utterly incompetent to perform the ordinary governmental duties expected of a civilized state; and yet it refused to permit the building of the canal under conditions which would have perpetuated its control of the isthmus, and which would at the same time have put a stop to what can legitimately be called government by a succession of banditti. The United States would have shown itself criminal, as well as impotent, if it had longer tolerated this condition of things.

I was prepared to advocate our openly avowing that the position had become intolerable, and that, in pursuance of our duty to ourselves as well as to the world, we should begin the building of the canal. But my knowledge—a knowledge which, as regards most of the essential points, was shared by all intelligent and informed people—of the feeling on the isthmus was such that I was quite prepared to see the people of the isthmus themselves act in such a way as to make our task easier. They felt that it was of vital importance

to them to have the canal built, for they would be its greatest beneficiaries; and therefore they felt such bitter indignation at Colombia's indifference to their interests and refusal to permit the fruition of their hopes that among them there was a literally unanimous desire for independence. Not only was there not a single man on the isthmus who wished to perpetuate Colombian control, but all Colombians sent hither, even the soldiers, after a very short residence grew to share the desire of all Panamanians for the establishment of a separate republic. Hitherto the knowledge that the United States would interfere to stop all disturbances on the isthmus that interrupted traffic across it had resulted to the benefit of Colombia; and it was this knowledge that had been the chief preventive of revolutionary outbreak. The people of Panama now found themselves in a position in which their interests were identical with the interests of the United States; for the Government of Colombia, with elaborate care, and with a shortsightedness equal to its iniquity, had followed out to its end the exact policy which rendered it morally impossible as well as morally improper for the United States to continue to exercise its power in the interest of Colombia, and against its own interest and the interest of Panama. There was no need for any outsider to excite revolution in Panama. There were dozens of leaders on the isthmus already doing their best to excite revolution. It was not a case of lighting a fuse that would fire a mine—there were dozens of such fuses being lit all the time; it was simply a case of its ceasing to be the duty of the United States to stamp on these fuses, or longer to act in the interest of those who had become the open and malignant foes of the United States—and of civilization and of the world at large.

Every man who read the newspapers knew that with the failure of Colombia to ratify the Hay-Herran Treaty revolutionary attempts became imminent on the isthmus. The papers published on the



1. Hotel Washington at Colon.
2. Panama Railroad Station at Panama.
3. Hotel Tivoli, at Ancon, social headquarters on the Isthmus.



isthmus themselves contained statements that these revolutions were about to occur, and these statements were published in the Washington and New York and New Orleans papers. From these published statements it appeared that, if the canal treaty fell through, a revolution would in all probability follow, that hundreds of stacks of arms were being imported, that the government forces in Panama and Colon were themselves friendly to the revolution, and that there were several distinct and independent centers of revolutionary activity on the isthmus. It was also announced that the government at Colombia was hurrying preparations to send troops to Panama to put down the revolution. Of course I did not have to rely merely upon what I saw in the newspapers. From various sources I had gathered enough to satisfy me that the situation was at least as bad as the papers depicted it. Through two army officers who had visited the isthmus in September I gained concrete and definite information. They informed me that, owing to the dissatisfaction because of the failure of Colombia to ratify the Hay-Herran Treaty, a revolution was certain to break out on the isthmus, and that the people were in favor of it, and that it might be expected immediately on the adjournment of the Colombian Congress without ratification of the treaty. In response to my questioning, they said they were certain that a revolution—several different revolutionary movements were being planned independently of one another—would occur immediately after the adjournment of the Colombian Congress in October; while on the isthmus they had calculated that it would not occur until after October 20, because not until then would a sufficient quantity of arms and munitions have been landed to supply the revolutionaries. Acting in view of all these facts, I sent various naval vessels to the isthmus. The orders to the American naval officers were to maintain free and uninterrupted transit across the isthmus, and, with that purpose, to prevent the landing

of armed forces with hostile intent at any point within fifty miles of Panama. These orders were precisely such as had been issued again and again in preceding years—1900, 1901, and 1902, for instance. They were carried out. Their necessity was conclusively shown by the fact that a body of Colombian troops had landed at Colon and threatened a reign of terror, announcing their intention of killing all the American citizens in Colon. The prompt action of Captain Hubbard, of the gunboat *Nashville*, prevented this threat from being put into effect; he rescued the imperiled Americans, and finally persuaded the Colombian troops to reëmbark and peacefully return to Colombia.

With absolute unanimity the people of the isthmus declared themselves an independent republic, and offered immediately to conclude with our Government the treaty which Colombia had rejected, and to make its terms somewhat more favorable to the United States. No bloodshed whatever had occurred, and it could not occur unless we permitted Colombian troops to land. The Republic of Panama was the *de facto* government, and there was no other on the isthmus. There were therefore two courses open to us. One was to turn against the people who were our friends, to abandon them, and permit the people who were our foes to reconquer Panama with frightful bloodshed and destruction of property, and thereby to reëstablish and perpetuate the anarchic despotism of the preceding fifty years—inefficient, bloody, and corrupt. The other course was to let our foes pay the penalty of their own folly and iniquity and to stand by our friends, and, as an incident, to prevent all bloodshed and disturbance on the isthmus by simply notifying Colombia that it would not be permitted to land troops on Panama. Of course we adopted the latter alternative. To have adopted any other course would have been an act not merely of unspeakable folly but of unspeakable baseness; it would have been even more ridiculous than infamous. We recognized the Republic of

Panama. Without firing a shot we prevented a civil war. We promptly negotiated a treaty under which the canal is now being dug. In consequence Panama has for eight years enjoyed a degree of peace and prosperity which it had never before enjoyed during its four centuries of troubled existence. Be it remembered that unless I had acted exactly as I did act there would now be no Panama Canal. It is folly to assert devotion to an end, and at the same time to condemn the only means by which the end can be achieved. Every man who at any stage has opposed or condemned the action actually taken in acquiring the right to dig the canal has really been the opponent of any and every effort that could ever have been made to dig the canal. Such critics are not straightforward or sincere unless they announce frankly that their criticism of methods is merely a mask, and that at bottom what they are really criticising is having the canal dug at all.

The United States has done very much more than its duty to Colombia. Although Colombia had not the slightest claim to consideration of any kind, yet, in the interests of Panama, and so as to close all possible grounds of dispute between Panama and Colombia, the United States some time ago agreed to a tri-party treaty between herself, Colombia, and Panama, by which, as a simple matter of grace and not of right, adequate and generous compensation would have been given Colombia for whatever damage she had suffered; but Colombia refused to agree to the treaty. On this occasion, in my judgment, the United States went to the very verge of right and propriety in the effort to safeguard Panama's interests by making Colombia feel satisfied. There was not the slightest moral obligation on the United States to go as far as she went; and at the time it seemed to me a grave question whether it was not putting a premium upon international blackmail to go so far. Certainly nothing more should be done. There is no more reason for giving Colombia money to soothe her feelings for the loss

of what she forfeited by her misconduct in Panama in 1903 than for giving Great Britain money for what she lost in 1776. Moreover, there is always danger that in such cases an act of mere grace and generosity may be misinterpreted by the very people on whose behalf it is performed, and treated as a confession of wrongdoing. We are now so far away from 1776 that this objection does not apply in that case, and there would be no particular reason why any sentimental persons who feel so inclined should not agitate to have Great Britain paid for the nervous strain and loss of property consequent upon our action in that year and the immediately subsequent years. But we are still too near the Panama incident to be entirely certain that base people would not misunderstand our taking such action in her case; and as there was literally and precisely as much moral justification for what we did in Panama in 1903 as for what we did in our own country in 1776—and indeed even more justification—it is as foolish now to claim that Colombia is entitled, or ever has been entitled, to one dollar because of that transaction as to claim that Great Britain is entitled to be compensated because of the Declaration of Independence.

Not only was the course followed as regards Panama right in every detail and at every point, but there could have been no variation from this course except for the worse. We not only did what was technically justifiable, but we did what was demanded by every ethical consideration, national and international. We did our duty by the world, we did our duty by the people of Panama, we did our duty by ourselves. We did harm to no one save as harm is done to a bandit by a policeman who deprives him of his chance for blackmail. The United States has many honorable chapters in its history, but no more honorable chapter than that which tells of the way in which our right to dig the Panama Canal was secured and of the manner in which the work itself has been carried out.

CHAPTER XXXIX

PANAMA CANAL LEGISLATION

REASONS FOR CONSTRUCTING THE CANAL—THE SPOONER ACT—AUTHORITY FOR PURCHASE OF CANAL PROPERTY AND ACQUISITION OF CANAL ZONE—ALTERNATE ROUTE AUTHORIZED—REVOLUTION OF PANAMA RESULTS IN NEW TREATY—CONGRESS APPROPRIATES MONEY—PROVIDES FOR A LOCK CANAL—FORTIFICATIONS AUTHORIZED—PERMANENT GOVERNMENT ACT—CANAL COMMISSION SUPERSEDED—PRESIDENT AUTHORIZED TO FIX TOLLS—FAR-REACHING LEGISLATION AFFECTING RAILROAD-OWNED VESSELS AND POWERS OF INTERSTATE COMMERCE COMMISSION—CONTROVERSY OVER TOLLS ON AMERICAN COASTWISE VESSELS—THE REPEAL ACT—FOREIGN VESSELS ADMITTED TO AMERICAN REGISTRY.

By J. HAMPTON MOORE

Member of Congress from Pennsylvania

BY what legal processes did the United States come to secure possession of the Panama Canal property and what means did it employ to complete the work of construction and to organize the government now in control at the Isthmus?

The story of the pioneers has been told; the brilliant and tragic achievements of the explorers have filled innumerable volumes, and each succeeding story heightens the general interest in the great scheme of uniting the waters of the Atlantic and Pacific in liquid wedlock. More prosaic than the tales of Balboa the discoverer, of Morgan the buccaneer, or of de Lesseps, the promoter, but equally essential to the practical accomplishment of the great dream of the ages, was the work of the statesmen in the American Congress who devised the plan and provided the means for attaining the result on the basis of law. It is easy to sit upon the hilltop and dream of the union of rivers that glisten in the valley below, but the marshalling of the men and the money to engage in so vast an undertaking was anything but a day-dream. To draw the plans by which a given number of cubic yards of earth could be removed from a given area was probably the easiest step in the work

of constructing the canal; it is a vastly different thing to provide the equipment, and to secure the army of workers sufficient to surmount the difficulties existing in so unhealthy an environment, thousands of miles from the base of supplies.

The early surveys afforded every opportunity for individuals or nations to enter into the work of canal construction either at Nicaragua or at Panama. The daring, but unsuccessful, effort of the French company under de Lesseps supplied the American Congress with ample information as to the breakers ahead. It is still a disputed question whether the historic voyage of the *Oregon* was responsible for the desire of the American people to undertake the work of canal construction. Commercial expansion, or the desire to figure in the world's trade, undoubtedly had much to do with it. Later on, when the question of fortification arose, it was evident that the military and naval advantages of the canal had been considered among the reasons for its acquisition and construction.

When at last the people of the United States were ready to build a canal, the preparation of the necessary legislation was begun in both Houses of Congress. The distinguished Iowan, Colonel William

P. Hepburn, who under the lamented McKinley, was chairman of the Committee on Interstate and Foreign Commerce, a committee having jurisdiction over matters of this kind, introduced a bill looking to canal construction, and so did the learned Senator from Wisconsin, the Hon. John C. Spooner, who was then at the head of the Senate Committee having jurisdiction in such cases.

If the United States was to go into the canal business, it must necessarily have a start warranted by law, and after long discussions in committee and in conference and upon the floor of the Senate and House, the basic law which has since been called the Spooner Act was passed, and signed by President Roosevelt, June 28, 1902. Although induced to some extent by the Hay-Pauncefote Treaty of February 22, 1902, and modified in certain particulars by subsequent legislation, this act, the title of which is "To provide for the construction of a canal connecting the waters of the Atlantic and Pacific Oceans," may be regarded as the organic law of the Panama Canal. And it is worthy of comment that although the estimated sum of money appropriated in the Act of June 28, 1902, for the purchase and construction of the canal, has been greatly exceeded by subsequent appropriations, the object set forth in the Act, to wit, the construction of a canal connecting the waters of the Atlantic and Pacific Oceans, was prosecuted with such intelligence and vigor that in twelve years from the date of the passage of the Act, the monumental work which had been dreamed of through the centuries and upon which other nations had expended years of toil and innumerable lives, had been completed, and, in effect, dedicated to the commerce of the world.

It may be left to others to enlarge upon the controversies ensuing from interpretations of the Clayton-Bulwer and Hay-Pauncefote treaties with Great Britain. They had to be considered by our national legislators in reaching a basis for proceeding

lawfully to the acquisition of the canal. It is generally conceded that without the Hay-Pauncefote treaty, this country must have undertaken to construct a canal such as was contemplated, in violation of the troublesome convention known as the Clayton-Bulwer treaty, made back in 1850, when conditions were radically different from those succeeding the Spanish-American War. The chief objection to the United States assuming the work, however, was removed by the Hay-Pauncefote treaty when, in Article 2, it was agreed

"that the canal may be constructed under the auspices of the government of the United States, either directly at its own cost, or by gift or loan of money to individuals or corporations, or through subscription to or purchase of stock or shares, and that, subject to the provisions of the present treaty, the said government shall have and enjoy all the rights incident to such construction, as well as the exclusive right of providing for the regulation and management of the canal."

This waiver having been obtained from Great Britain, the Congress of the United States was in a position to proceed to negotiate for the property of the Panama Canal Company, or for an alternative route by way of Nicaragua. It is noticeable that while Congress had in mind the taking over of the property of the French Company at Panama, it threw an anchor to windward, so that in the event of the failure of negotiations for the project of de Lesseps, the commission appointed by the Act could proceed to negotiate for "a ship canal and waterway from a point on the shore of the Caribbean Sea near Greytown, by way of Lake Nicaragua, to a point near Brito on the Pacific Ocean."

Taking the Act of June 28, 1902, as the organic law of the Panama Canal, let us see what the legislative mind had in view at the inception of the project. First, the President of the United States was authorized to acquire

"for and on behalf of the United States, at a cost not exceeding forty millions of dollars, the rights, privileges, franchises, concessions, grants of land, right of way, unfinished work, plants, and other property, real, personal, and mixed, of every name and nature, owned by the New Panama Canal Company, of France, on the Isthmus of Panama, and all its maps,

plans, drawings, records on the Isthmus of Panama and in Paris, including all the capital stock, not less, however, than sixty-eight thousand eight hundred and sixty-three shares of the Panama Railroad Company, owned by or held for the use of said canal company, provided a satisfactory title to all of said property can be obtained."

That was the first step by which, under the Hay-Pauncefote treaty, the canal was to be constructed "under the auspices of the government of the United States." And, after appropriate negotiations, the French rights and titles were turned over to the United States.

The second section of the organic act authorized the President, who at that time was Mr. Roosevelt,

"to acquire from the Republic of Colombia, for and on behalf of the United States, upon such terms as he may deem reasonable, perpetual control of a strip of land, the territory of the Republic of Colombia, not less than six miles in width, extending from the Caribbean Sea to the Pacific Ocean, and the right to use and dispose of the waters thereon, and to excavate, construct, and to perpetually maintain, operate, and protect thereon a canal, of such depth and capacity as will afford convenient passage of ships of the greatest tonnage and draft now in use, from the Caribbean Sea to the Pacific Ocean, which control shall include the right to perpetually maintain and operate the Panama Railroad, if the ownership thereof, or a controlling interest therein, shall have been acquired by the United States, and also jurisdiction over said strip and the ports at the ends thereof to make such police and sanitary rules and regulations as shall be necessary to preserve order and preserve the public health thereon, and to establish such judicial tribunals as may be agreed upon thereon as may be necessary to enforce such rules and regulations."

In the third section it was provided

"That when the President shall have arranged to secure a satisfactory title to the property of the New Panama Canal Company, as provided in section one hereof, and shall have obtained by treaty control of the necessary territory from the Republic of Colombia, as provided in section two hereof, he is authorized to pay for the property of the New Panama Canal Company forty millions of dollars and to the Republic of Colombia such sum as shall have been agreed upon, and a sum sufficient for both said purposes is hereby appropriated, out of any money in the Treasury not otherwise appropriated to be paid on warrant or warrants drawn by the President."

Thus provision was made for the purchase money, the expenditure of which would clear the track for the actual work of digging and construction. Section 3,

having conferred authority upon the President to acquire the necessary rights and titles, proceeded to direct him "through the Isthmian Canal Commission," for which provision was subsequently made, to

"cause to be excavated, constructed, and completed, utilizing to that end as far as practicable the work heretofore done by the New Panama Canal Company, of France, and its predecessor company, a ship canal from the Caribbean Sea to the Pacific Ocean."

Then followed legislative instructions indicating that Congress at that time had in mind the construction of a canal equal in dimensions to any in existence, and capable of passing the largest vessels afloat. Here is the exact language of the law:

"Such canal shall be of sufficient capacity and depth as shall afford convenient passage for vessels of the largest tonnage and greatest draft now in use, and such as may be reasonably anticipated, and shall be supplied with all necessary locks and other appliances to meet the necessities of vessels passing through the same from ocean to ocean; and he shall also cause to be constructed such safe and commodious harbors at the termini of said canal, and make such provisions for defense as may be necessary for the safety and protection of said canal and harbors. That the President is authorized for the purposes aforesaid to employ such persons as he may deem necessary, and to fix their compensation."

Having thus mapped out a course of action for the President and having thus supplied him, as it were, with the ways and means to proceed with the great business in hand, Congress wisely set up an alternative course of action. The whole of section 4 of the organic law relates to a possible recourse of the President in the event of the failure of negotiations with the French concessionaires, or with Colombia, or any other country, over the Panama property. What if the French should decline the \$40,000,000? was evidently the thought running through the mind of Congress; or What if Colombia, which assumes jurisdiction over Panama, should become obstinate or balk at the terms which the United States shall offer? It is not the purpose of this chapter to deal with the Colombian controversy that arose after the Panama revolution, or to dwell

in detail upon the negotiations between the President's representatives and the French interests. It may be observed, however, that while the two parties were brought to a speedy agreement as to the value of the French rights and titles, the revolution of Panama, which was probably not foreseen by the framers of the Spooner Act, did bring on a controversy which has not yet been settled to the satisfaction at least of Colombia.

Whether the lawmakers feared the outcome of negotiations with Colombia or not, the fact remains that they desired the President to have a free hand to quit Panama and Colombia, if the terms and conditions became unreasonable, and go elsewhere. The recent Colombian contention that Colombia ought to be paid for certain rights it claimed to possess before the Panama revolution and the negotiations had by President Roosevelt with the Republic of Panama as an independent country, show that the congressional plans were not without good reason.

Remembering that sections 1, 2, and 3, related to the Panama Canal and the accompanying rights and privileges exclusively, and contemplated purchase and construction at that point, section 4 looms up as a saving clause against extortion, misunderstanding, or delay. "We desire to do business at Panama," said Congress, "but if you will not sell, or if you become extortionate, then we will leave you and take up the great work of uniting the oceans at another place."

"Should the President be unable," said section 4,

"to obtain for the United States a satisfactory title to the property of the New Panama Canal Company and the control of the necessary territory of the Republic of Colombia and the rights mentioned in sections one and two of this Act, within a reasonable time and upon reasonable terms, then the President, having first obtained for the United States perpetual control by treaty of the necessary territory from Costa Rica and Nicaragua, upon terms which he may consider reasonable, for the construction, perpetual maintenance, operation, and protection of a canal connecting the Caribbean Sea with the Pacific Ocean by what is commonly known as the Nicaragua route, shall

through the said Isthmian Canal Commission cause to be excavated and constructed a ship canal and waterway from a point on the shore of the Caribbean Sea near Greytown, by way of Lake Nicaragua, to a point near Brito on the Pacific Ocean."

And if the Nicaragua route were chosen, then the Isthmian Canal Commission was to make the necessary surveys and proceed to the work of construction so that at Nicaragua a canal of dimensions equal to those contemplated for the Panama route should be provided.

The question of Panama or an alternate route being thus provided for, an appropriation of \$10,000,000 was set down in section 5 "toward the project herein contemplated by either route so selected." "And," continued this section,

"the President is hereby authorized to cause to be entered into such contract or contracts as may be deemed necessary for the proper excavation, construction, completion, and defense of said canal, harbors, and defenses, by the route finally determined upon under the provisions of this Act. Appropriations therefor shall from time to time be hereafter made, not to exceed in the aggregate the additional sum of one hundred and thirty-five millions of dollars should the Panama route be adopted, or one hundred and eighty millions of dollars should the Nicaragua route be adopted."

As a concession to the Republic of Colombia or to the States of Nicaragua or Costa Rica, should any agreement be entered into with them, the President was authorized by section 6 to guarantee to either of them "the use of said canal and harbors, upon such terms as may be agreed upon, for all vessels owned by said states or by citizens thereof."

The appointment of the Isthmian Canal Commission was provided for in Section 7. This commission was to be composed of seven members to be nominated and appointed by the President, by and with the advice and consent of the Senate, and they were to serve until the completion of the canal unless sooner removed by the President; and the President was to name one of them as chairman of the commission. It was the purpose of the lawmakers to secure commissioners of engineering skill, but it was not deemed advisable that all of them should be versed in

the science of engineering. It was provided that four, or a majority of the members of the commission, should be engineers, one of them an officer of the army and another an officer of the navy, said officers respectively being upon either the active or the retired list of the army or the navy. And they were to receive such compensation as the President should prescribe, subject to the action of Congress. In addition to the members of the Isthmian Canal Commission, the President was authorized, through the commission, to engage the services of engineers of the army or engineers in civil life, or any other persons necessary for the proper and expeditious prosecution of the work. The President was given complete control over the commission, which was to report to the President, who was to transmit all reports to Congress. In addition the commission was to give Congress such information as it desired at any time. Thus the executive was put in complete control of work upon the canal, while Congress reserved to itself the right to be informed upon any pertinent matter should questions at any time arise as to the proper expenditure of the public money.

The eighth, or final section, of the basic act provided that the Secretary of the Treasury should have authority to borrow on the credit of the United States from time to time as the proceeds might be required to defray the expenses authorized by the act, and to issue coupon or registered bonds to the extent of \$130,000,000, or so much thereof as might be necessary. These bonds, some of which have been sold, as work upon the canal has progressed, were to be issued at the rate of two per cent. per annum, redeemable after ten years from the date of issue, and payable thirty years from that date. The bonds were to be disposed of by the Secretary of the Treasury at not less than par, and all citizens of the United States were to have an equal right to subscribe thereto.

The passage of this act, which put the President in a position to begin business,

was followed by negotiations that resulted successfully so far as the French interests were concerned, but which did not terminate favorably with respect to Colombia. The Colombian government was slow at coming to a bargain, and before a conclusion was reached, negotiations were completely upset by the revolution of Panama, which declared itself free of Colombian domination. The Republic of Panama, having thus attained its independence and having come to be recognized by the United States, the Hay-Bunau-Varilla treaty of February 26, 1904, was effected. This treaty not only guaranteed the independence of the Republic of Panama, but provided for the payment to Panama of \$10,000,000 in gold coin, and an annual payment beginning thereafter, of \$250,000, to continue so long as the convention lasted. In consideration of this payment the Republic of Panama, amongst other things, granted to the United States

"all rights which it now has or hereafter may acquire to the property of the New Panama Canal Company and the Panama Railroad Company as a result of the transfer of sovereignty from the Republic of Colombia to the Republic of Panama over the Isthmus of Panama, and 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; but the public lands situated outside of the zone described in Article II of this treaty now included in the concessions to both said enterprises and not required in the construction or operation of the canal shall revert to the Republic of Panama, except any property now owned by or in the possession of said companies within Panama or Colon or the ports or terminals thereof."

With the rights and title thus established by the treaty-making power, Congress proceeded in orderly fashion to further the work. On April 28th, 1904, an act was approved to "provide for the temporary government of the Canal Zone at Panama, the protection of the canal works, and for other purposes." This act authorized the President, on the acquisition of the New Panama Canal Company property and the payment of the \$10,000,000 to Panama,

"to take possession of and occupy on behalf of the United States the zone of land and land under

water of the width of ten miles, extending to the distance of five miles on each side of the center line of the route of the canal to be constructed thereon, which said zone begins in the Caribbean Sea three marine miles from mean low-water mark and extends to and across the Isthmus of Panama into the Pacific Ocean to the distance of three marine miles from mean low-water mark, and also of all islands within said zone, and in addition thereto the group of islands in the Bay of Panama named Perico, Naos, Culebra, and Flanenco, and, from time to time, of any lands and waters outside of said zone which may be necessary and convenient for the construction, maintenance, operation, sanitation, and protection of the said canal, or of any auxiliary canals or other works necessary and convenient for the construction, maintenance, operation, sanitation, and protection of said enterprise, the use, occupation, and control whereof were granted to the United States by article two of said treaty."

The zone referred to was to be known as "the Canal Zone," and all the military, civil and judicial powers, essential to its temporary government were to be exercised as the President should direct. The inhabitants of the zone were to have "free enjoyment of their liberty, property, and religion." It is noteworthy that this act of April 28, 1904, enlarged upon the Spooner Act, in that in accordance with the Hay-Varilla treaty, it extended the width of the zone from three miles to five miles from the center, thus establishing a zone from sea to sea ten miles in width, instead of six miles as provided for in the organic law. This was much superior to the concessions contemplated in the Colombian negotiations.

From this time on, canal legislation had to do very largely with appropriations to forward the work, and in this respect Congress was ever ready to deal liberally with the estimates of the engineers as they came up through the commission and the President. It was equally helpful during the earlier stages of the work, when Civil Engineers Wallace, Shonts, and Stevens were in control, as it was after the army engineers took charge under the direction of Colonel George W. Goethals. These laws were chiefly in aid of the men who were upon the ground, and for the control of such business as was incident to the occupation of the territory. In February,

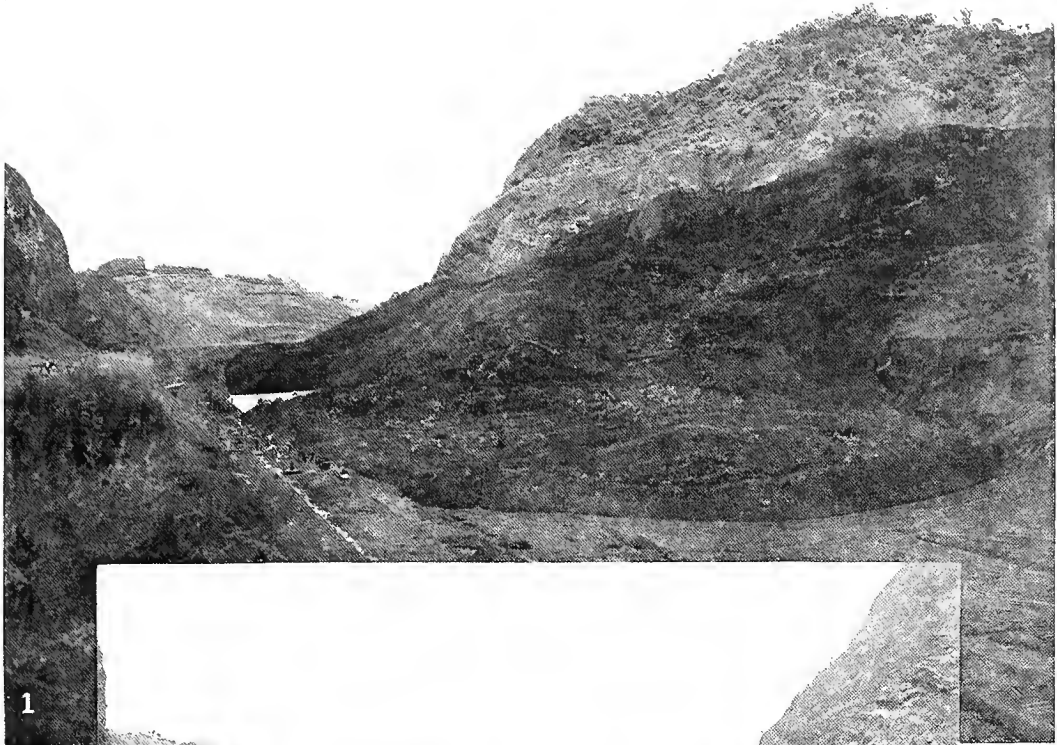
1905, it was provided that the Isthmian Canal Commission accounts should be audited by the auditor of the war department. In March of the same year, an act was passed which made the laws of the United States affecting imports and the entry of persons into the United States applicable to merchandise and persons coming from the Canal Zone. That is to say, the tariff laws and the immigration laws were made to treat the zone as foreign territory. The issue of bonds to raise funds to continue the construction was provided for in an act passed in December, 1905. In June, 1906, a joint resolution was passed providing that materials and equipment for use in the construction of the canal would be restricted to articles of domestic production, except in certain cases.

Then, on June 29, 1906, came the very important act which was passed only after a nation-wide discussion, providing for a lock canal, rather than the sea-level canal for which a large body of citizens contended. The lock canal was to be of the "general type proposed by the minority of the board of consulting engineers, created by the order of the President." In this instance the technique of the engineer gave way to the common belief of the legislators that a sea-level canal would be prohibitive as to cost, and more troublesome to control than a lock canal. The lock-canal system, which is now in operation, received its sanction through this act, and the locks and dams, as now completed, are the product of the nearly nine years' labor ensuing.

From 1906 on, the legislation related chiefly to appropriations and supervision of canal work, railroad construction, and the like, and was attached to the annual Sundry Civil and Urgent Deficiency bills. In May, 1907, it was deemed proper to provide compensation for injuries sustained by employees in the course of their employment on the Canal Zone, and several measures with this end in view were enacted. Leases of land to tenant holders, some of them desiring to conduct small



1. Looking south past Cucaracha slide, December 9, 1913.
2. Nine days later, looking north.



1



2

1. How Cucaracha slide came down many times a year and bottled up the south end of Culebra Cut.
2. Laborers trying to lead a stream of Gatun Lake water through the slide and down to Pedro Miguel.



plantations, were provided for in February, 1909, but these leases have since been revoked, owing to the determination of the government to clear the zone of all occupants save those employed in the control or supervision of the property. Numerous other appropriation and regulatory acts were passed down to 1911, when provision was made for sea-coast batteries and for construction work looking to the fortification of the Canal Zone.

The time had come, in the judgment of Congress, to provide for the protection of the canal, and this was done, notwithstanding a wide-spread agitation in favor of neutralization. The friends of neutralization in Congress contended that it would be far better to have the nations that expected to use the canal cooperate with the United States on friendly terms, rather than to establish fortifications which might be regarded as a challenge; but the military experts prevailed and the fortifications were set up, it being contended that the right to do so was fully supported by the Hay-Pauncefote treaty.

When eventually the work had so far advanced that Colonel Goethals and his associates advised the President that the opening of the canal might be expected along about July 1, 1915, the President, who at that time was Mr. Taft, suggested to Congress the propriety of preparing for the actual work of operation and government. The act, "to provide for the opening, maintenance, protection, and operation of the Panama Canal, and the sanitation and government of the Canal Zone," approved August 24, 1912, was the result. This act, considered and passed by a Democratic Congress, and approved by a Republican President, who had formerly been Secretary of War, naturally evoked much discussion. It was argued at great length in Senate and House, the discussion centering largely upon the question of tolls,—a question which was destined to become an issue in the succeeding political campaign.

The canal was opened nearly a year

ahead of the predictions of the engineers, not formally, but sufficient for the passage of small boats connected with the work, and ultimately for regular vessels of commerce, from which, up to about the 1st of February, 1915, tonnage tolls were collected to the extent of about \$2,000,000.

While the act approved by President Taft, August 24, 1912, embodied many preceding provisions of law with respect to the operation of the canal, it also contained a number of new provisions, some of them made necessary by the actual operation and maintenance of the property as a canal. Being the law under which, in the main, the government of the Canal Zone is now conducted, reference should be made to some of its provisions. The first section defines the Canal Zone and distinguishes the canal by title as "The Panama Canal." It authorizes the President, by treaty with the Republic of Panama, to acquire any land above or under the water that may be desired in addition to the ten-mile strip. Section 2 gives validity to all laws, orders, regulations and ordinances heretofore adopted and promulgated in the Canal Zone by order of the President, and continues the courts, subject in each instance to the direction of Congress.

Sections 3 and 4 authorize the President by executive order to dispose of all private titles or claims to land on the Canal Zone under certain conditions, and to dispense with the services of the Isthmian Canal Commission when in his judgment it may seem proper. Upon the discontinuance of the Isthmian Canal Commission, the President was authorized to complete, govern, and operate the canal and the Canal Zone, or to direct that it be done,

"through a governor of the Panama Canal and such other persons as he may deem competent to discharge the various duties connected with the completion, care, maintenance, sanitation, operation, government, and protection of the Canal and Canal Zone.

The President, acting upon this authority, made Colonel Goethals governor of the canal, and he is now in charge. These details respecting appointments, compen-

"The commission shall have full authority to determine the terms and conditions upon which these connecting tracks, when constructed, shall be operated, and it may, either in the construction or the operation of such tracks, determine what sum shall be paid to or by either carrier. The provisions of this paragraph shall extend to cases where the dock is owned by other parties than the carrier involved.

"(b) To establish through routes and maximum joint rates between and over such rail and water lines, and to determine all the terms and conditions under which such lines shall be operated in the handling of the traffic embraced.

"(c) To establish maximum proportional rates by rail to and from the ports to which the traffic is brought, or from which it is taken by the water carrier, and to determine to what traffic and in connection with what vessels and upon what terms and conditions such rates shall apply. By proportional rates are meant those which differ from the corresponding local rates to and from the port and which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water.

"(d) If any rail carrier subject to the Act to regulate commerce enters into arrangements with any water carrier operating from a port in the United States to a foreign country, through the Panama Canal or otherwise, for the handling of through business between interior points of the United States and such foreign country, the Interstate Commission may require such railway to enter into similar arrangements with any or all other lines of steamships operating from said port to the same foreign country."

"The orders of the Interstate Commerce Commission relating to this section shall only be made upon formal complaint or in proceedings instituted by the commission of its own motion and after full hearing. The orders provided for in the two amendments to the Act to regulate commerce enacted in this section shall be served in the same manner and enforced by the same penalties and proceedings as are the orders of the commission made under the provisions of section fifteen of the Act to regulate commerce, as amended June eighteenth, nineteen hundred and ten, and they may be conditioned for the payment of any sum or the giving of security for the payment of any sum or the discharge of any obligation which may be required by the terms of said order."

Having thus imposed upon the Interstate Commerce Commission a very great responsibility in the matter of rates in connection with the operation and maintenance of the canal, Congress provided in the other sections of the governing act for the extradition of persons accused of crime (section 12) and for placing exclusive authority and jurisdiction over the canal and all its adjuncts upon such officer of the army as the President might designate

should war, or the imminence of war, make such designation and such army control expedient. The last section of the act provided, for the sake of convenience and to distinguish it from the Spooner Act and all others, that it should be known as "The Panama Canal Act."

This, in brief, is the story of the law governing the Panama Canal. It remains but to consider one or two other measures apart from appropriation bills that have an important bearing upon the entire canal subject. The repeal act of June 15, 1914, was one of these. The discussion over the repeal of the tolls exemption clause was one of the most exciting of the Sixty-third congress. Democrats and Republicans divided upon the question, but most of the former supported the repeal bill because of the attitude of President Wilson. Distinguished leaders like Speaker Clark and Mr. Underwood opposed the President in the House, while Senator O'Gorman, of New York, and others in the Senate fought earnestly for freedom from tolls. Senator Root made one of the most remarkable speeches of his career in the Senate, insisting that the United States was morally bound to repeal the free tolls exemption provision of the Panama Canal Act. In both houses, treaty provisions and diplomatic correspondence were raked over with a fine-tooth comb. All previous laws that had any bearing upon the subject were dragged into the discussion. The Republican leader of the House, Mr. James R. Mann, of Illinois, who had gone on the Committee on Interstate and Foreign Commerce when he entered the House in the Fifty-fifth congress, argued against the repeal and in favor of the right of the United States to grant preferential tolls or no tolls at all to the American merchant marine. The Democratic chairman of the Committee on Interstate and Foreign Commerce, Mr. Adamson, of Georgia, who had been a member of the committee since the days of Colonel Hepburn, and who first debated the tolls question with that distinguished Iowan, took issue with both the

Republican leader and the Democratic leader of the House, insisting that there was no excuse for releasing American ships from the tolls imposed upon ships of other nations.

In reporting the repeal bill for the majority of his committee, Mr. Adamson said:

"During the last Congress your committee recommended uniform tolls. By an amendment vessels engaged in the coastwise trade of the United States were exempted and discretion was left in the President when levying tolls, based on net registered tonnage, on vessels of commerce of the United States and its citizens to fix them lower than on other vessels of commerce. The amendment also made possible a discrimination by fixing the minimum tolls on other vessels, based on net registered tonnage, at the cost of operation, while in levying tolls based on other forms of tonnage the minimum was fixed at the equivalent of 75 cents per net registered ton. The purpose of this bill is to repeal the exemption of vessels engaged in coastwise trade and to amend the other language so as to remove the possibility of discrimination in order to promote equality at the canal."

For a minority of the committee, although all of the minority were not of one mind, Mr. Knowland, of California, presented an earnest report against what he termed "The humiliating surrender of every American right at Panama." Said Mr. Knowland:

"I emphatically dissent from the views of the majority which are in the main but a reiteration of the arguments advanced by Sir Edward Grey, secretary of state for foreign affairs of Great Britain, in opposition to the position taken by Congress when it enacted the existing canal law, which American position was strongly upheld by Secretary of State Knox on behalf of this Government.

"I vigorously protest against the attempt to force the Congress of the United States, through a legislative enactment, to give a British interpretation to the Hay-Pauncefote treaty, thus surrendering for all future time rights vitally affecting this nation commercially, strategically, and politically.

"A situation unparalleled and unprecedented in history now confronts this country. The custodian of our rights, our agent in dealing with foreign affairs, advocates the case of Great Britain. We are left without a spokesman. With no attempt to settle through diplomatic channels, with no suggestion looking to the reference of the vital question to arbitration, unconditional and complete surrender is urged."

In spite of the most determined opposition in Senate and House the repeal bill was finally passed. The President ap-

proved it June 15, 1914. This act, which reversed the tolls exemption provision of the Panama Canal Act, and set at naught the tolls plank of the Democratic platform at Baltimore, is now the law. It contains the proviso, "reserving all rights," which was tacked on to it in the Senate, and which served to ease the minds of certain Senators on the mooted question of British domination over our affairs. The insertion of this proviso facilitated the passage of the bill when its life in the Senate was threatened. Divested of its title, the repeal act is as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second sentence in section five of the Act entitled 'An Act to provide for the opening, maintenance, protection, and operation of the Panama Canal, and the sanitation and government of the Canal Zone,' approved August 24, 1912, which reads as follows: 'No tolls shall be levied upon vessels engaged in the coastwise trade of the United States,' be, and the same is hereby, repealed.

"Sec. 2. That the third sentence of the third paragraph of said section of said Act be so amended as to read as follows: 'When based upon net registered tonnage for ships of commerce the tolls shall not exceed \$1.25 per net registered ton, nor be less than 75 cents per net registered ton, subject, however, to the provisions of article nineteen of the convention between the United States and the Republic of Panama, entered into November eighteenth, nineteen hundred and three': *Provided,* That the passage of this Act shall not be construed or held as a waiver or relinquishment of any right the United States may have under the treaty with Great Britain, ratified the 21st of February, 1902, or the treaty with the Republic of Panama, ratified February 26, 1904, or otherwise, to discriminate in favor of its vessels by exempting the vessels of the United States or its citizens from the payment of tolls for passage through said canal, or as in any way waiving, impairing, or affecting any right of the United States under said treaties, or otherwise, with respect to the sovereignty over or the ownership, control, and management of said canal and the regulation of the conditions or charges of traffic through the same."

Another very important change in the Panama Canal Act of August, 1912, was the repeal on August 18, 1914, of that provision of the governing act which undertook to protect American ships against the registration of foreign-built ships "not more than five years old at the time they apply for registry, wherever built." In pursuance of a shipping policy inaugu-

rated by the administration and involving the purchase of foreign ships, it was sought to waive the limitation of five years, and so the Committee on Merchant Marine and Fisheries, Mr. Alexander, of Missouri, chairman, brought in the bill which Congress adopted. This measure, which is appended, gives a wide latitude to the President in authorizing the registry of ships and in suspending laws that have hitherto been regarded as protecting American interests with respect to ships and seamen. Under this act, President Wilson promptly prepared an order suspending the navigation laws in the manner set forth:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the words 'not more than five years old at the time they apply for registry' in section five of the Act entitled 'An Act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone,' are hereby repealed.

"Sec. 2. That the President of the United States is hereby authorized, whenever in his discretion the needs of foreign commerce may require, to suspend by order, so far and for such length of time as he may deem desirable, the provisions of law prescribing that all the watch officers of vessels of the United States registered for foreign trade shall be citizens of the United States.

"Under like conditions, in like manner, and to like extent the President of the United States is also hereby authorized to suspend the provisions of the law requiring survey, inspection, and measurement by officers of the United States of foreign-built vessels admitted to American registry under this Act.

"Sec. 3. This Act shall take effect immediately."

Since the passage of this act and the issuance of regulations by the President in conformity thereto, there was no legislation of consequence to the canal down to March, 1915, save as to appropriations for operation and maintenance. While the formal opening, in which the President was expected to participate, was deferred for prudent reasons, vessels of the United States and of all nations were using the canal, and the long-looked-for union of the two oceans was effected. Some of the vessels carried passengers from the Atlantic Coast to the Panama-Pacific Exposition at San Francisco, and cargoes of valuable merchandise were carried through the canal from coast to coast. The effect

upon the trans-continental railroads was perceptible, and the Interstate Commerce Commission was soon called upon to exercise some of its powers conferred by the Panama Canal Act with respect to railroad-owned vessels and freight rate adjustments.

In concluding this sketch of Panama Canal legislation, it may be appropriate now, as it was on June 20, 1912, when the question of canal fortifications was under consideration in the House of Representatives, to put the question as the writer then did: "The Panama Canal: Why Did We Build It—For Commerce or War?" At that time the thought in mind was that commerce and agriculture should be encouraged on the Canal Zone; that those who went to the Zone should aid in the promotion of business and thus assist the United States in obtaining a fair return for its vast expenditure. It was argued also that the encouragement of agriculture would aid in meeting the problems of the food supply on the Isthmus. Amendments proposing a study of the commercial opportunities afforded by the canal, as well as the agricultural possibilities of the land above water, were offered, but the military idea was then in the ascendant, and it was deemed best to clear the zone of all inhabitants except in Panama City, Colon, and other designated settlements. The amendments were therefore rejected. It is to be presumed, however, that in due course, as the government work upon the canal increases, and as international shipping avails itself more generally of the advantages of the canal, problems of fuel and food supply, along with the many other problems incident to so great an undertaking, will result in some action by the United States to secure for its merchants and business men such advantages in South America and the international trade as the ownership and operation of the canal would seem to justify. Otherwise the value of the canal as a stimulant to trade and a promoter of American interests will not be fully realized.

CHAPTER XL

PROBLEMS OF QUARANTINE

THE GEOGRAPHY OF DISEASE—OPENING OF CANAL PROVIDES HIGHWAY FOR DISEASES AS WELL AS FOR COMMERCE—BUBONIC PLAGUE, CHOLERA, YELLOW FEVER, LEPROSY, TYPHUS, AND SMALLPOX ANCIENT WANDERERS THAT FOLLOW MANKIND AROUND THE EARTH—PRECAUTIONS TO BE TAKEN AT PANAMA—SANITARY EFFECT UPON COMMERCE OF THE NEW TRADE ROUTE—UNITED STATES GOVERNMENT ACQUIRES JURISDICTION OVER FOREIGN VESSELS FOR QUARANTINE PURPOSES.

BY RUPERT BLUE, M.D., D.P.H.

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THE first problems in the Panama Canal project were sanitary ones incidental to its construction. With the opening of the canal to commerce other problems equally grave and demanding sanitary acumen of the highest order will present themselves. Difficulties must be expected and forestalled wherever nature is to be dominated and made to serve man's purposes. Such has been the invariable experience from the earliest history of humanity's struggling progress. All the difficulties were not passed when primitive man lassoed the first wild horse, taught it to feed in the stall and fixed the bit in its refractory mouth—there still remained the perils of horsemanship. The construction and launching of the first rude canoe was a notable victory over the watery bounds hemming in the savage's activity, but shipwreck and the perils of the sea were yet to be contended with and a thousand expedients for as many difficulties invented. The aeroplane mounts to the clouds, but the daily press is an endless chronicle of the dangers of the navigation of the air. The ventilating of tunnels, the fireproofing of buildings, safety appliances in railroad transportation are other examples of the continued efforts in the interest of human welfare called for after the successful installation of useful improvements on older ways of doing things.

The high standard of sanitation already established in the Canal Zone must be maintained as long as the canal is to be operated with safety to health. In addition to this continuance of sound hygienic practices already begun, new problems will immediately arise with the opening of the canal—problems incidental to the changes in the routes of navigation, highways, not only of commerce, but of epidemic disease.

No branch of geography is more subject to changes than the geography of disease as the result of great human movements such as those caused by war, by emigration, by the opening of new territory, or by changes in the routes of commerce on land and sea. This is particularly the case with the geographic distribution of quarantinable diseases. It is usual to speak of these diseases as having endemic areas in certain parts of the world, centers in which they have become established and from which, under favoring conditions, they issue and spread to sections previously unoccupied by them, sometimes forming new centers of permanent prevalence.

In order to comprehend this matter clearly, it must be remembered that epidemic disease is but a manifestation of an existing cause, the living germ whose presence in the human body excites the phenomenon we call disease. The geography of disease resolves itself then into the



1. Early print of the present city of Panama.
2. Ancon Hospital grounds, with Tivoli Hotel in the distance.



distribution of the disease-producing factors, and is precisely analogous to the distribution of groups of plants or animals. The habitat of all plants and animals is subject to mutations due to many familiar causes, as, for example, geological and climatic changes and the invasion of new territory by other animals or by man. The appearance, disappearance or re-appearance of any given disease in a special territory is very similar to the behavior of insects and plants under certain conditions. Changes of an effective nature likely to operate on the geographical distribution of diseases caused by living organisms are to be expected as a result of the modifications in world routes incidental to the opening of the Panama Canal.

It is self-evident that diseases whose distribution varies widely at different times and under changing circumstances are those against which the measures included in the practice of quarantine apply. Plague is a scourge whose wanderings in many ages over the face of the earth have linked its dismal story with the history of mankind in many epochs. Cholera is another traveler whose fatal shadow has been thrown over many a melancholy chronicle in the pages of history. Yellow fever, issuing from its tropical home, has too often followed the routes of travel and commerce. Leprosy, an ancient wanderer; typhus, haunting the abodes of poverty and filth; and smallpox, a squatter in various climes, are other ills whose vagrancy have caused them to be classified among quarantinable diseases.

Research in recent years, by the application of modern laboratory methods, has led to very precise knowledge of the causative agents of infectious diseases. In no branch of medicine have these scientific advances been productive of greater benefit than in the combat with the disease scourges accompanying civilization in its commercial, emigratory and colonizing movements. The story of these ills tracking mankind on a thousand marches and voyages is of intense economic interest.

The close connection between new routes of travel and the spread of disease is shown by the fact that the word "Lazaretto" was brought back by the crusaders on their return to Europe. Places outside the gates of nearly all the principal cities of Europe were built for the reception of sick crusaders, who also brought back with them numerous diseases. The name came from that of the Hospital of St. Lazarus, a place of sequestration for contagious maladies which the crusaders erected outside the walls of Jerusalem after taking the city from the Mussulmans. Leprosy became widespread during the epoch of the crusades as the result of opening new routes of travel and increased use of old routes.

Plague is a disease which has always maintained itself in certain endemic centers in Asia from which waves of diffusion, following lines of travel, have from time to time originated. New foci have been temporarily formed in different parts of the world, and from these secondary centers epidemic waves have spread. The relation between the prevalence of plague among rodents and its outbreak in men is notably emphasized in the chronicles of the disease, the infection being generally conveyed from rat to rat and from rat to man through the agency of fleas. The expediency of ridding ships from rats is obvious.

Cholera, a disease having its home in India, particularly about the delta of the Ganges, has followed almost invariably in its excursions throughout the world the lines of traffic by land and water, selecting certain routes and omitting others. The most important of recent discoveries regarding this disease is that persons exhibiting no symptoms of illness may carry the disease in their bodies and communicate it to others. The necessity for a rigid laboratory examination of all exposed persons is evident. Yellow fever has long been associated with the shipping. The prevention of its spread from port to port by screening and mosquito destruction has been made possible by the demonstration of

the connection of a species of mosquito insect with the disease.

Every good, it is said, brings evils in its train. The shortening of certain ocean routes by the opening of the Panama Canal means in many cases the bringing closer together of disease centers with territory whose invasion by such disease is feared. This disadvantage may be neutralized by the proper application of sanitary measures. Geographical disadvantages, obstacles in themselves to traffic, are often barriers against the spread of disease. Their removal, effected by the intelligence and energy of man, must go hand in hand with artificial defenses against the passage of disease. An interesting point of inquiry is to what extent freedom from imported disease is due to geographical position and climatic conditions. The peculiar geographical position of Great Britain minimizes to a certain degree the introduction of disease through commerce. The application of sanitary measures to the specific cases arising from the great changes in ocean routes is the problem whose successful solution, by methods at present available, is the task presenting itself to the sanitarian with the opening of the Panama Canal. The difficulties of the work can be to a large extent foreseen and hence provided for, but it is natural to expect that special conditions, wholly novel concerning details, will arise calling for solution on the spot and perhaps giving origin to improved procedures beneficial to public health. Often in this way disadvantages are turned into advantages and the efforts to correct matters in single instances result in widespread improvement in lines not directly parallel with those in point. As a concrete example, the measures at Panama against rats as carriers of plague may lead to the fulfillment of a hope long entertained of rendering rat-free the shipping of the world.

Because of its close commercial relations with foreign ports, this country is deeply interested in the health of other countries. Great strides in the direction of world sani-

tation can be made by the policy of demanding that all vessels passing through the canal, even when the port of departure and that of destination are foreign ports, shall be in the health condition required by the United States quarantine regulations for vessels arriving at domestic ports. This means that no vessel issuing from the canal shall have on board any person sick of quarantinable disease, or shall lodge any human carrier of such disease, or any animal, such as rats or mosquitoes, capable of conveying disease. Loss of time in the operation of quarantine measures, fumigation and the like, may in appropriate cases be obviated by their application during the transit of the vessels through the canal. By such courses, sanitation, which made the cutting of the canal possible, may bestow a further boon on the world by making the canal a sieve to sift out disease dangers that might otherwise pass through the world's highways, infecting other lands and perhaps in time returning to our shores.

The high seas are a road to which no nation claims ownership. Its routes are open to all. Each nation imposes such regulations as it deems fit on vessels sailing under its flag. But sanitary restraints foreign to the country where a vessel is registered do not become effective until the vessel enters within the jurisdiction of the foreign government under whose authority the regulations were made. The coming of a vessel within the sphere of control of a nation having an interest in the health of the world is an opportunity of unusual advantage for bringing into action sanitary rules and practices beneficial to shipping, having in mind the selection of these measures, the minimum restraint of commerce consistent with effectiveness.

It is especially important to improve such a favorable opportunity for the betterment of the hygiene of shipping in view of the fact that, with the rising standard of living, there is in operation a progressive increase in traffic by sea. Not only

are civilized nations becoming yearly more dependent on foreign trade, but even half-savage peoples, from lack of local manufactures, look to shipping as a means of trading the crude products of wild lands for clothing and certain food elements originating in distant parts of the world.

Though unrestrained at sea, the freedom of a ship comes at once, as has been indicated, under control the moment the vessel enters the limits of a port. Not only do regulations become effective controlling air space, light, ventilation and life-saving appliances, but rules are prescribed bearing on the health of passengers and crews and on the presence aboard of living beings, such as rats, the carriers of plague, and mosquitoes, the intermediaries between patients afflicted with yellow fever. Thus governments as public protectors, are under obligation to the people to see that every reasonable effort is made on every available occasion to protect the health of those who go to sea and of those with whom sea-going persons and the vessels that carry them are brought in contact ashore.

Arriving within the limits of a port, the inbound vessel must stop, and submit to inspection of everything aboard, papers, passengers, crew, cargo, supplies, the ship itself, in so far as the quarantine authorities deem expedient. As a result of this examination the vessel is either given free pratique to enter port, or may be detained for the application of such sanitary measures as are deemed necessary in the interest of public health.

A knowledge of the highways of the sea, of the localities where disease is likely to prevail, and of the changes of relations between ports that will be brought about by the opening of the Panama Canal, is necessary to a clear understanding of the questions under consideration. The ocean trade routes of the world, too numerous even to be charted on ordinary maps, could not be intelligibly reviewed within a limited space. They are multitudinous. The use of steam has doubled the number. All routes, be-

cause of the complex relations of trade, will be directly, indirectly or remotely affected immediately or at a later period by the opening of the canal. The full extent of the effect of these changes on international health aspects can only be surmised.

In order to understand clearly the extent of changes involved, a glance may with benefit be taken at the chief trade routes of the world without going so far afield, or rather to sea, as to trace the endless side-tracks, feeders and other accessory routes, except when their consideration has direct bearing on quarantine.

The chief routes of the North Atlantic are those connecting the Atlantic Coast of the United States with ports of Northern Europe. One-sixth of the ocean commerce of the world, carried by the largest and fastest vessels, follows this route. Any epidemic disease occurring in ports brought thus into relation may take the same path.

The route created by the Suez Canal is next in importance. It passes from the Atlantic through the Straits of Gibraltar, with accessory routes including all ports of the Mediterranean, and then around the continent of Asia to Japan. Cholera and plague have in Asia their endemic homes near the tributaries of this track, and along its course are many ports opening into territory both in Europe and in Asia that has on numerous occasions received the visitations of these scourges. The epidemic of cholera in Italy and elsewhere in Europe in 1910 and 1911 is an example.

The South African route, drawing on the scattered settlements of the west coast of Africa, divides at the Cape Verde Islands into two branches, one bound for the English Channel, the other for New York. By these routes, the world's highway is open to communicable diseases that may from time to time prevail on the west coast of Africa. Cape Colony, Natal, Rhodesia, and the Transvaal were, within the last decade, the seat of an extended epidemic of plague

The region to the eastward of Cape of Good Hope receives visits from vessels passing along the west coast. Some go to Australia and New Zealand, countries afflicted with plague during the prevalence of the present world-wide epidemic of that disease. This route to Australia is used in preference to the Suez route by vessels plying between the United States and Australia.

Around the coast of South America from the eastern projection of that continent to Panama and up the west coast of North America to British Columbia sweeps another great world highway. Yellow fever, plague, and smallpox are among the unwelcome visitors which vessels visiting certain ports on this route may involuntarily receive aboard. Calls are often made at Rio de Janeiro and Santos, where Brazilian coffee is received, and at the River Plate, where grain and meat are the chief cargoes. Commodities of various character are received and discharged at ports between southern Chile and Guayaquil, a region parts of which, because of their insalubrity, are the subject of much alarm on the part of sanitarians, travelers and the shipping interests. Vessels in the New Zealand trade returning to Europe with cargo add to the shipping through the Strait of Magellan, and certain steamers running between New York and San Francisco or Hawaii pass through the same channel.

The routes entering the Gulf of Mexico and the Caribbean Sea by the several inlets are frequented by vessels from the Atlantic Coast of the United States and from Europe which visit, as do also vessels from the Gulf Coast of the United States, the many ports of that tropical region and are thus exposed to the dangers of yellow fever, plague, and other communicable disease which may at the time exist at these places.

Of Pacific routes, the most important is that connecting North America and Asia. San Francisco, Puget Sound, Portland, and San Diego are the well-known American

termini. Manzanillo and Salina Cruz are the Mexican ports interested. Some vessels call at Hawaii, and all courses meet at Yokohama, whence the route follows the coast of Asia, having access to ports closely scrutinized for cholera and plague, and thence to the Philippines.

Finally, there are the routes from the Pacific Coast, whereby San Francisco is connected with New Zealand, via Tahiti; and Vancouver with Australia and the Fiji Islands.

The most decided effect in trade routes incidental to the opening of the Panama Canal will be the change in the route around South America. By way of the canal the voyage from New York to San Francisco will be 5,000 miles, which is 8,000 miles shorter than by the Magellan route. New Orleans will save 9,000 miles and Liverpool 6,000 miles in sending ships to San Francisco. Guayaquil is brought 7,500 miles nearer New York, 8,500 miles nearer New Orleans, and 5,500 miles nearer Liverpool.

The western coast of South America comprises an immense territory rich at present, and likely with the development of trans-Andean railroads to become richer by its intercourse with Brazil and Argentina. Through Panama this vast territory will come in close relation with the commerce of the world. Without a watchful surveillance not only will its wealth be cast into the stream of commerce, but by the same channel yellow fever, plague, etc., with which some of its ports have been cursed, may also enter the current.

From New York and the North Atlantic ports of the United States, the distance to the Philippines and Hongkong by Panama is not much less than by Suez. The distance from New Orleans to Manila, about 13,000 miles by the Suez via Colombo and Singapore, is reduced to about 11,000 miles by the Panama route. New York is nearly 4,000 miles nearer Sydney, Australia, by way of Panama, than by Cape of Good Hope. The distance from New York to Australia is practically the same by Cape

of Good Hope as by the Suez Canal, and the Cape route has the advantage over the Suez of more favorable winds and currents and of a lower temperature.

The important sanitary effect of changes in ocean commerce brought about by the use of the Panama route is shown by a comparison of the distance between the Atlantic and the Pacific by the new waterway and by the routes at present in use.

The following table shows the distance by way of the Straits of Magellan and by Panama Canal from New York and from New Orleans to San Francisco and Iquique:

	By	By
	Magellan	Panama
From New York—		
To San Francisco.....	13,714	5,299
To Iquique.....	9,221	4,021
	By	By
	Magellan	Panama
From New Orleans—		
To San Francisco.....	14,114	4,698
To Iquique.....	9,621	3,420

For purposes of comparison in the table, New York has been selected as the principal Atlantic port of the United States; New Orleans as the chief Gulf port; San Francisco as the leading Pacific port of the United States; and Iquique, Chile, as the center of the nitrate of soda section.

Distance alone does not in all cases determine the routes of vessels; the cost of operating including port expenses, fuel, pilotage, tolls, etc., enters into the decision; but enough has been shown by a review of routes to indicate that immense changes involving sanitary problems of the gravest importance are impending.

The defense of Panama includes sanitary as well as armed defense. Sanitary guarding is not only a local protection in the case of Panama; it means an improvement of the hygiene of shipping throughout the world.

CHAPTER XLI

THE PROPOSAL TO COMPLETE THE CANAL BY CONTRACTORS' GROUPS

AMERICAN ENGINEERS INDIFFERENT TO EARLY FRENCH OPERATIONS—SPANISH WAR STIRS UP PATRIOTISM—CONTRACTORS EAGERLY STUDY AMERICAN CANAL PLANS—COMMISSION CONSULTS LEADING CONTRACTORS AND DEVISES PLAN TO CONSTRUCT WATERWAY BY CONTRACTORS' GROUPS—WIDE VARIATIONS IN THE BIDS—INFORMAL BIDS—REJECTION OF ALL BIDS—CIVIL ENGINEERS AND CONTRACTORS GIVE FULL CREDIT TO COL. GOETHALS AND HIS STAFF.

BY ARTHUR F. MACARTHUR

TO the young engineer and constructor who was on the Isthmus of Panama in December, 1888, and witnessed the tragic dénouement of the work in the field of the "Compagnie Universelle du Canal Interocéanique de Panama" must have come some of the conclusions which came to the mind of the writer of this article, who was at that time a brief sojourner in the land where Count Ferdinand de Lesseps was the leading spirit. These conclusions were, in a word, that the acknowledged success which had attended the efforts of the great constructor in the joining of two seas in the Eastern Hemisphere had driven his luckless sun-chariot into oblivion under the tropical suns of the western world, and that the dream of three and a half centuries of establishing water communication across the Isthmus of Panama from ocean to ocean was at an end for at least a generation to come, if not forever.

No one could witness the destruction wrought by the then recent rains and not conclude, despite the charges of reckless and ill advised expenditures by the French company, which were apparently in evidence everywhere along the canal route, that after all, from a construction standpoint, the control of the flood waters of the Chagres River was the crucial test of the canal's feasibility. A continuous rain of two nights and days at that time had wrought ruin everywhere and apparently had put the active works and studies of a

decade by the best-known engineers in the world, with their thousands of co-workers, fabulous sums expended, and thousands of lives sacrificed in the undertaking, into the archives of romantic history. Never was a more pathetic human story written on the faces of mortals than was read by the writer in the faces of those hapless thousands in camps along the canal route and on the streets of Colon and Panama and about the crowded lobbies of the hotels in those luckless days on the isthmus in December, 1888.

"L'honneur de France" was the most frequently uttered phrase on the isthmus in those gloomy hours. It was reëchoed throughout the whole French republic from club to peasant-hut, and it was a specious argument which pictured the revival of the enterprise and its completion at any sacrifice of men or means by the French government.

While the work on the isthmus by the first French company had excited some interest on the part of the American engineers at its inception, comparatively few found employment thereon, and during the construction and for the decade following the appointment of the receiver for the company, the American engineer or contractor rarely heard of and paid small heed to the undertakings on the isthmus.

Busied with plans and undertakings for all kinds of construction work in the development of our own internal waterways, railways, hydro-electric properties,

sanitation, and buildings, there was work at home for all the talent of engineers and contractors in the beginning of one of the greatest eras of construction work ever inaugurated in America. And it is therefore not surprising that the tremendous impetus to patriotism aroused by the Spanish War should not have to wait to find a most ready expression in the individuals who for one cause or another had been denied the privilege of fighting for the flag in Cuba or Manila, while busied in the great undertakings at home. Accordingly, when the first isthmian commission was appointed to consider the whole question of isthmian transit by navigation the engineering and contracting fraternity of the United States patiently waited to be called into service for the greatest single undertaking of all ages in the line of their chosen work.

The isthmian canal was to become an accomplished fact, a world work was to be done by Americans with American brains, brawn and money, for Americans and for all the nations of the earth for all time. And it was no uncommon interest which was manifested in the query: Would it be done by the administration and those trained in government service, and be carried on as an army undertaking; or would those supposedly most skilled by experience in each particular department of this most complex and exceptionally great work be called from among the ranks of the nation's best civilians, who were trained executives in construction work and who could offer the immediate benefit of efficient existing organizations to aid the country in its great undertaking?

The Spanish War had done much more than put upon a secure footing the peace and happiness of a few neighboring Latin Americans and distant islanders. It had suddenly made the undertaking of the construction of the Panama Canal by Americans a national necessity, and the war's experience had uncovered a relief from one of the chief causes of previous failure on the isthmus. The causes of

malaria and yellow fever were no longer a mystery to science, and the medical profession was to play a prominent part in the construction and divide honors with engineers and constructors in the great work.

Men could now live and think and work on the isthmus through wet and dry months. The medical profession had already blazed the trail for successful accomplishment by the engineer and constructor, and the *bête noir* of the French, the Chagres River, vanished like its own rising miasma at noontide. The problem for the engineer and constructor was simply one of men enough, plant enough, time enough, and money enough, and the canal would be an accomplished fact at a cost which our government could well afford to pay.

Into the conferences of the Isthmian Canal Commission and the Board of Consulting Engineers, many of the leading engineers and contractors of the country were called from time to time, and after nearly three years of study, survey, and actual construction by the government, the waiting American contract world was rewarded for its interest in the matter by the suggestion that the government might soon consider the advisability of contracting the work of completing the canal by associating with the work of the commission the best trained talent of the world in each department of the undertaking; the plan contemplating a competition for the work between groups of contractors, each group composed of contractors who had achieved notable success in some of the departments of construction involved in the undertaking and whose combined experience covered the whole task, and whose reputations, like that of Cæsar's wife, must be above suspicion, and whose combined capital should be sufficient at all times to carry out their undertakings with the government.

For the formation of one such group of contractors, MacArthur Brothers Company were early invited, many months prior to

any public discussion of the matter and before any definite qualifications and requirements expected from possible bidders had been formulated by the commission.

Finally the question of contracting the completion of the work was discussed by the chairman of the Isthmian Canal Commission in a communication addressed to the Secretary of War, dated August 29, 1906. A copy of the communication was made public and submitted to prospective bidders, as indicating to them some of the reasons why the work was to be let to contractors, and the general qualifications and requirements which would be exacted by the government.

The widespread interest manifested in the work on the canal, which so far had been conducted under the immediate direction of the civilian chief engineers, one of whom had inaugurated the great work in its most trying period and stayed with it but little over a year, and whose successor was at this time barely entering upon his second year of incumbency, was now most naturally intensified in the public mind. When the announcement was made that President Roosevelt was seriously considering the placing of the completion of the canal under contract, the plan was interpreted by many to mean an admission of defeat by the government to its own organization, and dire results were predicted for the fortunes of any group of contractors who would enter into any partnership or dual performance with the government in this stupendous and risky undertaking. The enemies of the canal at home and abroad wisely shook their heads and rushed into print for a period.

Under the fire of such public discussion it was no easy task to enlist the interest of contractors in the groups desired by the government. Contractors of national reputation, achievement, and financial responsibility had to be induced by much argument, suggestion, and effort to join such a combination. The multiplied divisions of the work extended over a long series of

years, and the necessary division of profits did not appeal to large contracting concerns, all of whom were profitably employing their capital and organizations at home. Millions of capital and credit was to be interested in the proposed groups, for a long time, under so many conditions of risk, attendant with the personal danger to health in the tropics, that contractors and capital became shy of the undertaking after their first enthusiasm had subsided. The first drafts of invitations to bidders and proposed forms of contracts were many times modified and finally withdrawn, after much discussion between the President of the United States, the members of his cabinet, the chairman of the commission, and the intending bidders.

The frankness and evident fairness of these discussions, in an effort to harmonize all views and obtain the best results for the government, with a fair compensation for the contractor with the minimum of risk, characterized all the discussions at which the writer had the honor to be present. But finally in pursuance of the general plan, invitations were publicly issued to bidders throughout the country under date of October 9, 1906, calling for the reception of bids January 12, 1907.

After many weeks of fruitless negotiation between groups of contractors, and within a very few days of the time set for receiving bids, it became evident that few, if any, groups of contractors throughout the country could be formed, or bankers enlisted into the groups for the undertakings proposed by the government. Accordingly the specifications and financial requirements were at the last moment very materially modified, cutting down the bond to be given by the contractors from \$3,000,000 to \$2,000,000, and the available cash capital required down to \$5,000,000, which was always to be kept intact in the treasury of the contracting group.

Several hundred copies of the invitation to bidders and forms of contract were given out and received by and seriously

considered by the contractors of the country. And the widest publicity was likewise given through the popular and technical journals.

Bids from several competent groups were expected by the commission, as several tentative groups were known to have been formed for the purpose of bidding.

When it came, however, to the reception of the bids, while four bids only were presented, only one of them had complied with the terms and vital requirements of the invitations. That was the bid of the MacArthur-Gillespie Company, a group organized for the purpose of completing the construction of the canal pursuant to the invitation of the government, and composed of four of the most successful contracting concerns in the country. Each of the four concerns composing the group was recognized as having had a longer, wider and more successful experience in the field of contracting than any of the other bidders; and all had a larger experience in all the important branches of the work called to be done on the canal, and with a larger organization of trained and experienced men to draw from than all the other bidders combined.

For the successful, economical, and certain execution of the great work it was thought that the government had received in the bid of the MacArthur-Gillespie group the strength of the strongest and the skill of the most experienced contractors in the country.

The proposed contract for which the bidders tendered was based upon the theory of paying the contracting group the cost of the work which they undertook to perform plus a percentage for the risks assumed and profits expected by the group. The performance of the work, however, was to be a dual one by the commission and the contractor on a hitherto untried basis in the history of government contracts.

Large risks not incident to other government contracts were to be assumed by the contractor. It was difficult to determine

what possibilities of risk might arise, and if they did arise by whom were they to be assumed. Some of the most important functions upon which the success or failure of the contractor hinged were specially reserved and retained in the control of the commission.

The method of estimating the cost and time for the construction of the canal and the work which the contractor assumed was to be determined by an engineering committee of five members, two to be nominated by the contractors, and three by the commission, of which three one should be the chief engineer of the commission. This engineering committee was to be nominated after the contract should be executed and after the contractor had assumed all obligations, backed with its bond and cash resources. To some contractors the whole principle of the contracting group idea reduced the actual doers of the work to mere employees of the government, whose pay would become most uncertain and whose capital and time would be jeopardized. It is not surprising, therefore, that only four bids should be received and that, considering figures only, they should have varied in expected compensation to the contractor, being in numerical order as follows: 6.75 per cent., 7.17 per cent., 12.5 per cent., and 28 per cent. The wide range in the tenders was obviously the measure of the varying estimates of hazard existing in the judgment of the bidders.

To the public mind it appeared remarkable that a bid made upon a percentage basis should afford opportunity for such a range of risk, but an intelligent examination of the contract provisions and conditions under which the contractor was to receive his final compensation will, in the light of our knowledge today, now that the canal is completed, and its cost ascertained, force the conclusion that had either one of the two lowest bids been accepted and the contract undertaken, the unfortunate group would have long since lost all its original \$5,000,000 capital and several mil-

lions more, had it been able to progress with the work up to its nearly completed stage, or the government would have had a forfeited contract on its hands.

The bid of the MacArthur-Gillespie Company of 12.50 per cent., so strongly urged for acceptance upon the government at the time, would have resulted in dividends of patriotism to be distributed among its group.

There were doubtless contractors who would have undertaken the great work for a less percentage even than the so-called lowest bidder submitted, with the hope of snatching the first fruits therefrom and leaving the government in the lurch when the day of trial came. And well might the group of men who had submitted the only tender which complied with the terms and requirements of the invitations and specifications object to their efforts being laid aside, while serious consideration was being given to an informal tender. However, the right to consider an informal tender was reserved to the commission in the "General Instructions to Bidders," and thus by inference the warning to intending bidders against informality in their bids was nullified and the door left open for the commission to make the best trade it could for the government. This the commission sought to do with the lowest informal bidder, who upon his own suggestion was given time to qualify in the necessary financial and other requirements of the proposal, but not until after many formal protests had been made by able counsel in the interests of the MacArthur-Gillespie bid against such a proceeding, and oral arguments and printed briefs had been considered thoughtfully and fairly by the President and the commission in sup-

port of the contention for the right to the award, if any were to be made by the government, to the MacArthur-Gillespie Company, and not until after the writer on behalf of that company had in a personal interview with the President assured him of the hearty acquiescence by the group he represented in any procedure which would secure for the government the completion of the canal project on the wisest and most favorable terms to the country.

The rejection of all bids some days later, and the placing of the great enterprise again into the hands of the army engineers for completion by administration of the President through the commission, must now, after the years of successful accomplishment, meet with the unqualified approval of the American people.

It is far from one of the fundamental duties of good government that the action of its representatives should pursue the individual to his ruin. The suggestion to put this great national work under contract invited the possibility of such an outcome, and would have deprived the nation's faithful servants, the army, of participation in the glories of the actual accomplishment of the greatest single peaceful enterprise ever undertaken by any government.

The construction of the canal is now an accomplished fact, and well may the American engineers in civil life and contractors doff their hats to Col. George W. Goethals of the Army Corps and his group of trained constructors. They have proven themselves the silent, informal, and successful bidders for the contract which the President and commission might have overlooked had they not been looking for the best trade for the government with contractors.