

3. She shall agree, in case the other Powers shall so agree, to release Turkey from the obligations imposed on her by the Capitulations;

4. The amount of the indemnity payable to Turkey, in respect of the above two sources of loss, shall be submitted for assessment to the International Court of Arbitration at the Hague, such amount not to be less than (say) T. 5,000,000;

5. In consideration of the above undertakings and those set out below, Turkey shall agree to cede Tripolitana and Cyrenaica to Italy;

6. Italy shall grant in perpetuity to the Mussulman inhabitants of the ceded provinces religious freedom and the right to the full external observance of their religious ceremonies; enjoyment of the same civil and political rights as may be possessed by their fellow-inhabitants belonging to other religions; the right to use the name of H. I. M. the Sultan, as Khalif, in public prayers; recognition of Mussulman pious foundations (vakoufs); and untrammelled liberty of communication by Mussulmans with their religious heads at Constantinople, etc., etc.

RECENT POLITICAL DEVELOPMENTS IN CHINA

Events in China have moved with such bewildering rapidity that a brief review of the principal features may be helpful.

The immediate or precipitate cause of the recent disturbances was the adoption by the Imperial Chinese Government in the summer of 1911 of the policy of the nationalization or state ownership of railways; but among the underlying primary causes may be noted (1) Chinese-Manchu mutual antagonism; (2) dissatisfaction with Manchu inefficiency and misrule as exemplified in the weakness and corruption of the Prince Regent and many of his advisers; (3) the inflaming of the Chinese mind by often exaggerated statements in the vernacular press describing the baneful political conditions; (4) the activities of secret societies, and of returned students from Japan, the United States and Europe; and (5) the unrest resulting from successive famines during recent years in the Yangtze Valley, the numerous financial panics, and the plague in the winter of 1910-1911 in Manchuria. In a word, the revolution was essentially anti-dynastic.

On October 10th last five natives charged with being revolutionists were arrested in the Russian concession at Hankow, in the native section of which city a few hours later they were executed. This act resulted during the night in the mutiny of several hundred troops in Wuchang, opposite Hankow, who burned their barracks. The following day all the new army force at Wuchang, numbering 50,000 men, joined the revolutionists. Then followed in rapid succession the seizure of that city, the burning of the Viceroy's yamen, that official barely making good

his escape on a Chinese gunboat lying in the harbor, and the seizure of the arsenal as well as the provincial treasury and mint. A day later the revolutionists crossed the Yangtze River and captured the city of Hanyang with its arsenal and the great iron and steel works. The native city of Hankow quickly fell into the hands of the revolutionists. There was an uprising on October 20th in Nanking, the ancient Chinese capital. Three weeks later Canton declared its independence of the Manchus, and revolutionists, in many instances acting quite independently of any central authority, captured Foochow, Amoy, Hangchow, Soochow, and a long list of other important cities, many of them being the capitals of the central and northern provinces; they also acquired complete control in Shanghai, which thereupon became the headquarters of the insurrection.

At the same time the revolutionary movement met with reverses at Nanking. The Manchu general stationed there with about 10,000 troops refused to accede to the revolutionists' demands; whereupon the latter made an attack but were compelled to retire because of lack of ammunition. The next day the Manchu soldiers descended from the forts and overran the city, massacring thousands of the innocent inhabitants, men, women, and children, — all who were suspected of progressive tendencies, — while the revolutionary forces, 20,000 in number, waiting the arrival of ammunition from Shanghai, looked on helplessly.

Meanwhile the revolutionists, or the republicans, as they styled themselves, had established a cabinet form of government, with Wu Ting-fang, formerly Chinese Minister to the United States, as Minister of Foreign Affairs of the Provisional Government of China. About this time also Yuan Shih Kai, former grand councillor and commander-in-chief of the army and navy, was summoned by edict to Peking to accept the premiership and save the dynasty. After a long delay, Yuan accepted the post, proceeded to form, as a concession to the revolutionists, the first purely Chinese cabinet the Empire ever had, and began negotiations with them looking toward the cessation of hostilities and the recognition of a liberal constitutional form of government, with the Manchu dynasty nominally at its head.

Late in November the Imperial troops after severe fighting retook the city of Hanyang from the revolutionists, the latter retreating in confusion. This victory, however, was speedily followed by a new and determined revolutionary attack upon Nanking which resulted in its capture. The next day it was announced that Urga, the capital of

Mongolia, had declared its independence and banished the Chinese officials. The effect of these reverses and the unsuccessful attempts of Yuan Shih Kai to placate the revolutionists, led to the resignation of Prince Chun, as regent, December 7, in the hope of saving the throne to his son, the young Emperor, Hsuan Tung. Prince Chun was succeeded by a Manchu and a Chinese as joint guardians of the throne.

By this time the insurrection had acquired wide dimensions. All of the eighteen provinces, excepting portions of Chihli, Honan, and Shantung; had revolted, all forts, arsenals, and mints located therein having been seized. The entire imperialist fleet of some eighteen vessels, including four cruisers, had gone over to the revolutionary party; less than one-third of the army remained loyal, the other corps either joining the revolutionists or else declining to obey instructions from Peking.

The army corps stationed at Lanchow, a city in Chihli Province along the Peking-Shanhaikwan Railway, had made twelve demands of the Peking Government. These were presented through the national assembly by whom they were approved, the assembly and the army working in harmony. Edicts, in response to these demands contained apologies for past mistakes, amnesty to political exiles, grant of power to the assembly to frame a constitution, and promise of a new and responsible cabinet in which no member of the imperial family should hold office. Other and later edicts granted an immediate parliament; gave assurance that amendments to the constitution must originate in parliament; that the army and navy, though subject to the control of the Emperor, could not be used in domestic troubles except under regulations to be adopted by parliament; that the premier be elected by parliament, he to appoint ministers of state; and that parliament approve the budget and all treaties. Thus the Manchus were divested of all powers, only a shadow of their former absolute authority remaining.

Yuan Shih Kai, who had been made premier, entrusted with the reconstruction of the cabinet and given the supreme command of the army and navy, apparently lacked the full confidence of either party. On the other hand there were serious dissensions among the revolutionists. Among their organizations there was little cohesion or common leadership, though there did exist a certain unity of purpose; there were also the traditional jealousies of the provinces to be reconciled. The revolutionists south of the Yangtze were for a republic with Sun Yat Sen as president, while those north of the river at first favored a limited monarchy with a Manchu on the throne, merely as a figurehead, but

later stood out for a republic, with Yuan as its head. Thus both parties had come to insist upon the removal of the Manchu imperial family root and branch and the establishment of a republic. Only the Manchus, who number perhaps less than 5,000,000, together with a few extreme conservatives in the factions of the revolutionists, continued to talk of a constitutional monarchy with the retention of the Emperor on the throne. During the second week of December the differences separating the various parties seemed to admit of the possibility of immediate adjustment. On December 18, following the establishment of an armistice, representatives of the imperial government and the revolutionists went into conference at Shanghai. Tong Shao-yi, appointed commissioner on the part of the premier, headed the imperial, and Wu Ting-fang the revolutionary conferees. Wu, on behalf of his associates, presented four proposals; the abolition of the Manchu dynasty, the establishment of a republican form of government, the pensioning of the imperial family, and generous treatment of all Manchus.

On December 20, the American, British, French, German, Russian, and Japanese representatives at Peking delivered informally and unofficially through the consuls-general at Shanghai an identic note to Tong Shao-yi and Wu Ting-fang. This note, besides declaring adherence to the attitude of strict neutrality, called the attention of both parties to the desirability of arriving at an early understanding to end the conflict. This was the first concrete instance of concerted action by the six leading Powers during the disturbances in China, though steps looking toward such common action had been taken previously.

The negotiations of the peace commissioners continued for weeks, during which time a series of armistices was arranged. While these armistices were not always strictly observed the negotiations were never entirely broken off. The discussions of the conference turned upon the question of choosing between a republic and a limited monarchy as the form of government, thus showing further that the first aim of the revolutionists had been the overthrow of the Manchu dynasty. In the meantime, on December 28, Sun Yat Sen was unanimously elected, by the Nanking assembly, provisional president of the Republic of China, and was inaugurated as such on New Year's Day at that city. Finally, the throne, seeing that China proper was almost entirely in favor of a republic, and that the outlying dependencies of Tibet, Turkestan, Mongolia, and Manchuria were breaking away, decided it was best to yield to the popular demand and abdicate from power. The

edicts taking these steps were issued on the 12th of February. Thus the success of the conference was assured.

The Chinese love for compromise was a most potent factor making possible this success; another factor was the fear of foreign aggression. Both parties felt strongly that should two separate governments be established, one northern and one southern, foreign interference might be invited; that China's only hope of preserving her integrity lay in presenting a united front to the Powers.

It should be remarked that foreign life and property have throughout the disturbances been scrupulously respected by both factions. Foreign interference, however, would likely have united the factions and made the movement anti-foreign. Though no anti-foreign feeling manifested itself, yet in view of the seriousness of the disturbances and their general character, the American Minister at Peking was instructed at his discretion to advise his nationals in the affected districts to concentrate at such centers as were easily accessible to foreign troops or foreign men-of-war. Practically all Americans in the interior have during the progress of the disturbances assembled at these central points. The United States Asiatic Fleet, consisting of a score of vessels, several of which had consignments of marines on board, have rendered efficient service in affording all possible protection to American life and property in the coast cities and riverine ports in the interior. The permanent Legation Guard at Peking, composed of a company of marines, was increased early in October soon after the inception of the disturbances to over three hundred, which number was later raised to about five hundred. American marines have also been landed at several ports, often at the request of the native authorities and then only for brief periods.

It is of interest to note that the American Government, recognizing the obligations connected with the rights secured by the protocol of 1901, consented to join the other leading Powers signatory thereto in maintaining an international force of troops to keep open the railway from Peking to the sea. Accordingly, on January 9, 1912, orders were issued for the despatch of five hundred troops from Manila to north China, and on March 6th seven hundred additional troops from the same source were ordered there. This last consignment was to assist in preserving order in Tientsin and in the possible military occupation of the railway. These measures were acquiesced in by the Chinese Government.

In a note of February 3d, in reply to an inquiry from the German Government, Secretary of State Knox declared for the maintenance of

China's territorial integrity, reiterated the policy of non-interference, except by concerted action of the interested Powers, and proposed that the Powers should extend the principle of neutrality also to loans. It is reported that the British and German Governments have stated that the substance of the note is quite in accord with their own attitude, and that Japan and Russia also concurred in the policy of common action for the protection of the common interests in China during the present crisis. With reference to loans to the contending parties, it might be added that the repeated attempts of both the imperialists and the revolutionaries to negotiate loans with foreign bankers ended in failure, owing to the early decision reached by the governments concerned, and that the latter's attitude of strict neutrality precluded them from favoring their nationals rendering financial assistance to either faction.

Yuan Shih Kai was on February 15th unanimously elected Provisional President of the Republic of China by the Nanking assembly. Tong Shao-yi proceeded to Peking as envoy to convey to Yuan the notification of his election and to invite him to go to Nanking, which was at that time fixed as the provisional capital. The draft of the provisional constitution was adopted by the assembly, under which the provisional president is empowered to appoint a premier and form a cabinet. It is understood that after the creation of a permanent parliament that body will draft and adopt a final constitution. The resignations of Sun Yat Sen and his cabinet were accepted by the Nanking assembly to take effect on the inauguration of Yuan Shih Kai, which took place in Peking on March 10th. Tong Shao-yi, nominated by Yuan as premier, was confirmed by the Nanking assembly. A cabinet has since been named.

The concurrent resolution, introduced by Representative Sulzer of New York and passed by the House of Representatives on February 29th and by the Senate on April 13th, may be regarded as a mark of the traditional sympathy and confidence of the American people, expressed through the popular branch of Congress, with the new order of things in China. By the terms of this resolution the American people congratulated the Chinese people on their assumption of the powers, duties and responsibilities of self-government and expressed the confident hope that in the adoption and maintenance of a republican form of government the rights, liberties and happiness of the Chinese people would be secure and the progress of the country assured. This action was, of course, quite distinct from the executive act of recognition of the Republic of China, which will doubtless take place in due time in

accordance with the usual standards established by international law. Meanwhile, the United States has along with the other Powers entered automatically into informal relations with the *de facto* provisional government pending the establishment of such ultimate government as may be adopted.

Absolutism in China has received its death blow; and the new government, dedicated to the liberty, welfare and happiness of its nationals, and committed to stand for progress and reform, will, it is hoped and believed, worthily represent the great Chinese people.

DECISION OF THE SUPREME COURT IN THE CASE OF ROCCA V. THOMPSON ¹

On February 19, 1912, the Supreme Court of the United States, in the case of *Salvatore L. Rocca v. George F. Thompson* (in the matter of the estate of Guiseppe Ghio, deceased), affirmed the judgment of the Supreme Court of California that the public administrator, under the law of California, is entitled to letters of administration on the estate of an Italian citizen, dying and leaving an estate in California, in preference to the Consul General of Italy.² The Italian consul based his claim to the right of administration upon the clause in Article XVII of the treaty of May 8, 1878, between the United States and Italy, providing that the respective consular representatives of the two contracting parties shall enjoy "all the rights, prerogatives, immunities and privileges which are or may hereafter be granted to the officers of the same grade, of the most-favored nation." By virtue of this clause the consul claimed the same rights as are enjoyed by consuls of the Argentine Republic under Article IX of the treaty between that country and the United States concluded on July 27, 1853. This article provides that, in case a citizen of either contracting party shall die intestate in the territories of the other, the consul of the nation to whom the deceased belonged "shall have the right to intervene in the possession, administration and judicial liquidation of the estate of the deceased, conformably with the laws of the country, for the benefit of the creditors and legal heirs." Two distinct questions were therefore before the court: First, was the Italian consul entitled by virtue of the most-favored-nation clause of the Italian treaty to the same rights as are enjoyed by the Argentine consul under the treaty of 1853? Second,

¹ Printed in *Judicial Decisions*, p. 535.

² See for decision of the Supreme Court of California, this *JOURNAL*, Vol. 4, No. 3, p. 727; 157 Cal. 552.