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**The Pending Treaty
With Colombia**

By Edwin Maxey
(Reprinted from the January "Review of Reviews.")

The treaty now pending in the United States senate, between Colombia and the United States, for the adjustment of claims by the former against the latter is a document of more than ordinary interest. This statement is true whether we consider it from the political, the legal, or the historical viewpoint. It reopens a diplomatic incident of more than a decade ago and countenances a refusal upon the part of Colombia to recognize accomplished facts. But this is not necessarily conclusive against it, for what in the language of diplomacy is known as a fait accompli is always subject to review in the court of public opinion, where the statutes of limitation are not so rigidly applied as in the courts of law. Let us then in a spirit of frankness and candor examine the facts upon the basis of which Colombia now seeks reparation from the United States.

In 1903, the Hay-Herran treaty was signed by the diplomatic agents of the two countries acting under the advice of their respective governments. By the terms of this treaty, the United States was to pay Colombia ten million dollars in gold, and an annuity of a quarter of a million dollars a year, gold, beginning nine years from the ratification of the treaty. When this treaty was signed, there was no intimation on the part of Colombia, or anyone else, that the United States had overreached or attempted to overreach, bully, trick or deceive an unwary vendor or to drive a hard bargain at the expense of a weaker neighbor. Of such there is no evidence in the treaty or elsewhere. And it is worth remembering that the treaty was negotiated and signed on the part of Colombia under the direction of President Maroquin, who was at that time exercising the powers of a dictator, which powers he continued to exercise until after the treaty was rejected, by a congress which he was not compelled to call and which as political creations of his were ready to do his bidding. It is, therefore, within the facts to say that, between the time of negotiating the treaty and its rejection by Colombia, President Maroquin had seen a new light. Nor is it at all improbable that the light which had bedazzled his vision was the prospect that negotiations might be drawn out until after the expiration of the franchise of the French company when their rights could be confiscated and the forty million which the United States was to pay the Canal company would go to the Colombian treasury, of

which the aforesaid Maroquin was the watch-dog.

Panama's Revolt

But whatever may have been the motive of the arguments for the rejection of the treaty, whether the desire to enrich the Colombian treasury at the expense of the Canal company, which was the rightful owner of the property to be transferred, or to enrich certain Colombian politicians at the expense of the United States treasury, or the inability of the Colombian congress to alienate Colombian territory, the effect of rejecting the treaty was well understood by the people of Panama. By them it was interpreted to mean that their interests were being jeopardized by the government whose duty it was to protect those interests, and that their progress was being unwisely retarded by one who should use every reasonable effort to promote it. Nor was this an unnatural interpretation for them to place upon it. Other people under similar circumstances would have reached a like conclusion. Given a modicum of intelligence, and natures not altruistic to the extent of being incapable of being moved by considerations of self-interest, and what could be more natural than for them to be disappointed in the act of the Colombian government which had all the appearance of ruthlessly disregarding the larger interests of the province of Panama.

The matter was not argued at great length. To the people of Panama it seemed that what was necessary was action, not argument. And accordingly they acted with promptness. Within four days after the rejection of the treaty and adjournment of the Colombian congress they had declared their independence and set up a government of their own. Having reached the conclusion that their political guardians were recreant to their duty, they proceeded with dispatch to discharge them and to act in their own right. That every citizen of the province took part in the revolution is improbable, but the indifferent readily acquiesced in what the leaders did. So far as I can find there was a much smaller percentage of Panamans opposed to the revolution than there was of Tories during the American revolution. Even the Colombian soldiers in Panama joined in the revolution. Within four days the revolutionists were in full control and their independence was recognized by the United States and very soon thereafter by the countries of Europe. A treaty was negotiated between Panama and the United States providing for the payment to Panama of the same amount, which under the Hay-

Herran treaty was to have been paid to Colombia and granting to the United States substantially the same privileges as were granted in the Hay-Herran treaty.

Colombia "Guessed Wrong"

What then is Colombia's grievance? What is the nature of her injuries? And who is responsible for them? True, she has not received the ten million which she expected to get, nor the annuity, both of which went to Panama, nor the forty million which went to the French company, nor the bribe to the Bogota politicians, which stayed in the United States. But the fact that she did not get the first two is wholly her own fault and to the last two she never had any legitimate claim. I say her own fault, because the United States stood willing and ready, and there was no question as to her ability to carry out the provisions of the Hay-Herran treaty had Colombia not rejected it. In order to gain an uncertain advantage she sacrificed a sure thing. She was speculating, and guessed wrong. Whether in public or private business, what usually happens to the speculator who guesses wrong is a loss. Colombia now thinks that the loss due to her mistake should be borne by the United States. But to us it seems to be expecting too much of the United States to expect her to indemnify the Latin-American states against losses due to their own errors of judgment, and still more unreasonable where the error, as in this case, seems to have been one of motive. The plea that Colombia had no power to ratify the treaty was hypocritical, for as soon as the revolution broke out she was anxious to reopen negotiations with the United States and ratify the treaty. Their constitutional powers were the same in both cases, but their keenness for legal refinements weakened perceptibly when instead of gaining them time it was costing them coin.

The Burden of Proof on Colombia

It is not conclusive to say that "Colombia feels aggrieved, and whatever may be said as to whether or not this feeling is justified, no one will deny that she has sustained financial loss in the separation of Panama from her." The very nub of the whole question is whether or not her feeling that the United States has done her an injury is justified, for if not she is asking aims instead of asserting a right. In order to give her case standing in court she must assume the burden of proof in establishing the fact, not merely that she "feels aggrieved," but that she has suffered an injury and that not simply someone, but that the United States is responsible for that injury. If we are to be dispensers of charity for the promotion of happiness and good will throughout the world, let it be clearly

understood that what we are doing is dispensing charity rather than mislead ourselves or anyone else as to the nature of the transaction by purporting to pay debts which we have never incurred and which, as a matter of fact, do not exist.

\$25,000,000 as Reparation for What?

Such being the nature and extent of Colombia's grievances and the responsibility of the United States therefor, what is the reparation provided for by the pending treaty? The United States agrees to pay Colombia a lump sum of twenty-five million dollars, to give her coastwise vessels free transit through the canal during the continuance of our lease, and expresses regret. In return for this, Colombia agrees to do nothing, but to be nice and neighborly in her future relations with the United States.

While the treaty does not specify for what injuries the lump sum of twenty-five million is reparation, we are not precluded from inquiring. Nor is this an inopportune time for such inquiry. Though a part of it may be compensation to Colombia for the loss of her revisionary interest in the Panama railroad, no one claims that all of it is for this purpose. This claim is one the justice and amount of which could have been much more accurately determined by arbitration. But waiving the inexpediency of settling this by negotiation rather than by arbitration, there still is a considerable part of the lump sum to be

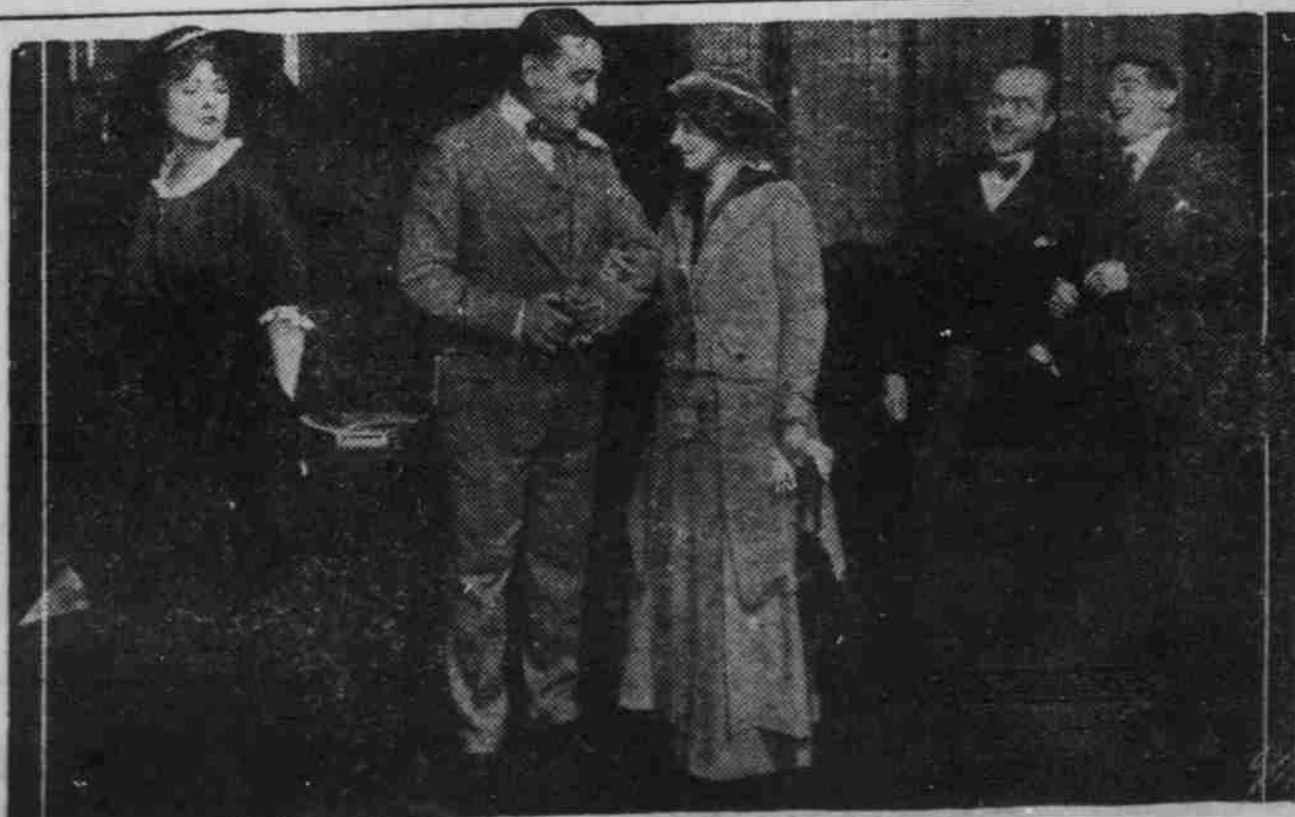


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