

BAYARD AND BEE.

How They Worked for the Chinese.

T. F.'s Touching Devotion to Cheng.

Story of the Mosby Episode and the Consular Certificate Game.

No more interesting chapter of inside political history has recently come to its legitimate denouement than that which involved the removal of Colonel Mosby from his position as Consul at Hongkong. It is another story of Secretary Bayard's un-Bayardlike truckling to foreign powers of time's ravages, of error, suspicion and of political faithlessness, which is particularly pertinent. It runs as follows:

Colonel John S. Mosby was appointed Consul for the United States at Hongkong, by President Hayes, August 24, 1878. He was an interested observer of the extensive Chinese emigration going on from the British port, but he took no part either in aiding or restricting it, and he felt still further justified in maintaining his neutral position when he found that the Restriction act of 1862 imposed no duties upon Consuls, and in fact said nothing at all about them.

It was with a good deal of surprise, therefore, when on or about the first of March, 1885, his friend Captain Berry of the City of Peking handed him the following letter:

IMPERIAL CHINESE CONSULATE-GENERAL,
SAN FRANCISCO, January 21, 1885.
Dear Sir: Under the instructions given by the Secretary of the Treasury, American Consuls can give a certificate to the exempt class in any foreign port where there is no Chinese Consul.

One of the Chinese benevolent societies has elected a President and Vice-President for this year (Wing Yang Society) who are residents of Hongkong, and they desire to come here. There is no one authorized to give them a certificate except the Consul, and you are requested to do so. There is no question about the status of them; they are not laborers, but coming alone. The President's name is Leo Kim Wah, over 50 years of age; the Vice-President being Lou Yung Fong, aged about 47. Yours truly, A. B. Bee.

The credentials of these men have been sent to Hongkong, which you can see if you desire.

Accompanying this letter, in which the thin end of a great disruptive wedge was artfully introduced, was a copy of the circular of instructions referred to in Bee's letter, issued by the Treasury Department at Washington. It was addressed, as it was but right it should be, "to officers of the Customs and others," was signed by H. McCulloch as Secretary, and was issued "to promote uniformly in the exemption of Chinese persons of the exempt class under the act of July 5, 1854." It contained four clauses, the second of which alone has a bearing on this story. It ran in this wise:

Second—Chinese subjects, not laborers, according to come to the United States from countries other than China, may do so on production of a certificate corresponding to that required by section 6 of the act of July 5, 1854, to be issued by a Chinese diplomatic or consular officer, if there be one at the port of departure, or if there be no such Chinese officer stationed at such port, on a like certificate to be issued by a United States consular officer.

The inspiration of this circular cannot, perhaps, be officially fixed, but in the light of after events there can be little doubt as to its source. Oriental diplomacy moves slowly, and the moves made to attain a certain end are begun long, long before the date of the expected result. The first wires by which this great plot was to be pulled had been laid down some time anterior to the coming of the present plastic Secretary of State, and one is almost tempted to believe that the act of July, 1854, was part of this great "slow" game.

When Mosby had read Bee's letter he was equally amused and disgusted. He was amused at the cunning of the play made, and he was disgusted at the attempt made to draw him into it. As a matter of fact, this was the first he had heard or seen of the Treasury circular; and as a matter of fact, too, he was certain that he had no more to do with the Secretary of the Treasury than he had with Mr. Bee. In order to dispose of the Bee portion of the affair he sat down at once and wrote on a slip of paper that the Treasury circular was addressed to custom officers, and not to consuls, and that it was at best but an implied permission for consuls to issue the certificates in question. He added that he had no intention to avail himself of this permission by implication, because he believed it contrary to law, and having finished this "opinion," he handed it to Captain Berry, and begged him to give it to Bee as his answer to that Chinese official's attempt to run the United States consular department.

The matter did not end there, however. Evidently the Chinese officials, both at home and abroad, had imagined that the opening power of the carefully prepared and dexterously inserted wedge would have been felt about this time, for not only did the "benevolent" old gentlemen, Messrs. Lee Kim Wah and Lou Yung Fong apply to Mosby for the coveted certificates, but these would-be exiles were followed by other "exempts," who wanted to see the Mellican man's land before they died. The thing got so serious at last that Mosby sat him down and wrote the following letter to Mr. Bayard's assistant secretary.

UNITED STATES CONSUL, HONGKONG, April 4, 1885.
Sir: Herewith I inclose a letter from F. A. Bee, Esq., Consul for the empire of China at San Francisco, requesting me to grant a certificate to two Chinese residents of Hongkong, who desire to go to the United States, in accordance with paragraph 2 of the circular of the Treasury Department, dated December 6, 1884. I have declined to issue certificates both to these as well as to other Chinese claiming to be merchants who desire to go to California, for the following reasons:

First—I have received no instructions from the State Department requiring me to give such certificates to Chinese, and I do not think the Secretary of the Treasury has legal authority to give validity to them if granted, or to impose any such duty on me. I would violate no law in certifying that a Chinaman was a merchant, student or traveler, just as I might certify to any other fact within my knowledge; but in my opinion the certificate would not be admissible as evidence to prove the fact. The Courts decided that the provision in the original act of May 6, 1854, for certificates to be issued by the Chinese Government to its subjects who were entitled by treaty to go to the United States was only directory; that is, that while it provided one mode of proof it did not exclude other evidence. My understanding is that the law was changed so as to meet this very objection, and that the amended act is mandatory, and makes it a condition precedent to the right of coming of the exempt class to the United States that they shall have a certificate of their status issued by the Government of which they are subjects, or issued by the United States at their port of departure.

Second—It is clear that the law is imperative requiring such certificates, as it is expressly declared to be "the sole evidence permissible on the part of the person seeking to give effect to the right of entry into the United States." A certificate of identification issued by a Government is, therefore, of no legal value or authority unless the person to whom it is given is a subject of that Government. There is nothing in the original or amended law giving even the color of right to a Consul to issue such certificate; his duty is limited to making an "examination into the truth of the statements set forth in said certificate," etc., before indorsing it. It is a well known fact that all Chinese emigrants to the United States embark at Hongkong (which is a British colony) and, with very few exceptions, are subjects of the Emperor of China.

Minister who indorses the certificate, must be accredited to the country that issues it. In other words, it is not my duty to give certificates issued by the Government of China. The American Consul in China, living in the district from which the emigrant depart, must do so, as he alone could ascertain the truth of the statements contained in the certificate. The Chinese Government has emigration to the United States from the Kwang-tung province of Southern China, and therefore this work must be done by the United States Consul at Canton. The Hongkong Government has never undertaken to issue such certificates to Chinese; if it did, it would be my duty to examine into the truth of them. I shall certainly not volunteer to do this work. I have, etc., JOHN S. MOSBY, United States Consul.

No reply came to this communication of Mosby's, but in its place came the curt notification that his services were no longer required by the Department of State. Now this notification of removal Mosby observed was dated May 1st, while his letter to Mr. Adee given above was written on April 4th, so that he could scarcely believe it could have reached Washington in twenty-six days; that is, he could not believe that the removal was a consequence. As a matter of fact Mosby's letter was not received by the State Department until May 13th, or twelve days after the letter of removal was written. The reader is asked to remember this. Mosby waited at Hongkong until his successor, Consul Robert E. Withers, arrived, which was on July 4th, 1885, and then set sail for home, determined to find out one or two things which had at once puzzled and rankled him.

The first thing he found out was that Withers, who had supplanted him, was a great personal friend of Bayard's, that he had indeed been one of the leaders in the boom of Bayard for President. He inferred, therefore, that for some reason or other this Hongkong consulate must be considered a very good thing.

He found in the next place that Withers had made the acquaintance of Bee while waiting in San Francisco for the China steamer to start, that he had in fact been conducted to the steamer by the representative of his Imperial Majesty, and that he had been indorsed by that official as a pleasant fellow who was not of the Mosby stiff-neck order.

He found also that this stiff-necked action had considerably exercised the various departments and offices, and had especially roused the Imperial Chinese Consul at San Francisco. He had, by the by, received a sample of engraved Orientalism before leaving Hongkong. When the discussion on the question of Consular certificates was going on the CHINESE interviewed Consul Bee on the matter (June 2, 1885), and a copy of the paper containing the report was received by Mosby in due time. In the interview he found the most extraordinary statements. The first was Bee's assertion that Mosby was behind the times and had not read the latest decisions of the United States Courts, which had distinctly ruled upon the admissibility of Chinese bearing United States Consular certificates. To the contrary, Mosby had pamphlet copies of both decisions on his table at that very time and he knew their contents well. In the case of Chen Cheong before the Supreme Court and An Min before the Circuit Court—the cases to which Bee referred—the petitioners did not have certificates from any United States Consul, and, therefore, as no such question as the right of a consul to grant a certificate was raised on the facts, the Court had expressed no opinion upon it at all.

The second most extraordinary statement of Bee's was that Mosby was all wrong, as the Chinese Restriction act plainly said that United States Consuls could grant such certificates. To read a little verisimilitude to an otherwise bald and unattractive statement, Bee, like his Oriental prototype, actually went so far as to quote this provision from the act. This staggered Mosby for the moment, and he confessed to the editor of the Hongkong Telegraph, with whom he was conversing on the subject, that if this were so he had made an egregious ass of himself and deserved recall. On searching the Restriction act, however, it was found that there was nothing of the sort in it. Then the quotation became familiar to Mosby, and turning to his copy of Bee's communication of January 21st, he found that the clever Consul had been quoting from the famous Treasury circular.

Remembering all this "diplomacy," Mosby could not help thinking that there was a peculiar nervousness in certain dates. He had received Bee's letter about the 1st of March. Bee would have received his rather contemptuous answer about the middle of April, both the Chinese Minister at Washington and Secretary Bayard could have been notified by the end of the same month of Mosby's insubordination, and the order of removal was written on the 1st of May. All this looked strange, and it looked stranger still when the light of future events came to be cast upon it.

Some time after his return to the United States Mosby learned that the heads of the departments had not been without their share of the fun. When Bayard was handed Mosby's letter, received May 13, 1885, he felt so secure of the right of his position that he sent the Mosby letter to Manning as soon as it had been properly filed, indexed, indorsed, etc. This took until May 27th. Unlike Bayard, Manning saw the force of the Mosby reasoning, and at once consulted with the Solicitor of the Treasury upon the subject. On the 6th of July, the Solicitor sent his opinion to Manning, it being that the concluding phrase of the second section of the Treasury circular was in conflict with the laws, and that the words "or, if there be no such Chinese officer stationed at such port, on a like certificate to be issued by a United States consular officer," should be stricken out of the orders. Acting Secretary Patrick informed the Collector of Customs at San Francisco of this change in the ruling July 13th, and there it was supposed the matter would rest.

By no means was this the case, however. The Treasury, it is true, had reconsidered its own orders, had communicated its new orders to the Collector at San Francisco and had also, there is small doubt, made Bayard acquainted with the change of front, according to the custom of inter-departmental courtesy; but on August 5th, twenty-three days after, Cheng Tsao Ju complains to Bayard that the customs authorities at San Francisco are not attending to their duties. The complaint is in the form of an unsigned and undressed memorandum. The Minister quotes the recited rule of the Treasury as his authority, and then goes on to state that the Chinese merchants residing in Hongkong constantly go to and from New York and San Francisco on commercial business. "Starting from Hongkong," he says, "where there is no Chinese official to issue them certificates for their entry into or transit through the United States, these merchants can only, in compliance with the rule stated above, apply to the United States Consul there for the same."

Having thus paved the way, Minister Cheng then proceeds to give another tap to the wedge. "The Secretary of State," writes the Chinese Minister, "is respectfully requested to instruct the newly appointed United States Consul to Hongkong to issue to such Chinese merchants certificates in accordance with the law and Treasury circular. This would greatly facilitate the trade and increase the commercial interests between the United States and China."

This "request" of Cheng Tsao Ju's, it must not be forgotten, was made nearly three weeks after the rescindment of the vital section of that very circular which he asks to have enforced, but despite this fact and the contemptuous tone of the Chinese official's undated and unsigned memorandum, Bayard duly makes his kowtow and writes with as much low-pitched gratitude as though he had been permitted to kiss the Emperor's big toe. His reply ran as follows:

DEPARTMENT OF STATE, WASHINGTON, August 11, 1885.
SIR: I had the honor to receive, on the 5th inst., through the secretary of your legation, your unsigned memorandum, in which you refer to the frequent departure of Chinese subjects, not laborers, under the stipulations of existing treaty, from the foreign port of Hongkong, and ask that the newly appointed consul there be instructed to issue to such Chinese merchants departing from that port certificates in accordance with existing statutes and with the second rule of the circular of the Secretary of the Treasury, dated December 6, 1884 (but which was rescinded in July, 1885). The circular of the Secretary of the Treasury of December 6, 1884, was in due time communicated to the United States Consul at Hongkong, among others, with instructions to carry out its provisions, especially in respect of the second rule thereof. This depart-

ment is unaware of any obstacle to the fulfillment of that instruction beyond certain technical objections raised by the late consul, Mr. Mosby. Nevertheless, in pursuance of the request conveyed by the memorandum, and in order that no possible interruption of the prescribed rule of conduct of the consul in the premises, may ensue by reason of the recent change in the incumbency of the office at Hongkong, an instruction will be sent forthwith to Mr. Robert E. Withers, the newly appointed consul at that port.

Accept, etc., T. F. BAYARD.

Two things are to be noted in connection with this letter. First, that at the time all this mutual admiration was going on between Bayard and Cheng the authorities at San Francisco were objecting to the landing of Chinese with consular certificates in obedience to the later notification of the Treasury Department. Second, when Mr. Bayard informed Mr. Cheng that Mr. Mosby had been instructed to carry out the provisions of the Treasury circular he must have been a little more inventive than he was correct, the State Department having issued no such instructions to him, while the only knowledge that he had of the Treasury circular was that which he gained when it came to him in Mr. Bee's letter.

According to his promise to the Chinese Minister Mr. Bayard that very same day wrote to Mr. Withers. After the usual preamble the letter reads:

The representations of the Chinese Minister are probably due to the course of your predecessor in raising obstacles to the execution of the Treasury circular. You will find Mr. Mosby's objection set forth in terms of a discussion of the points involved, and preferable to leave the matter until it should be made the occasion of an instruction to you as Mr. Mosby's successor. Without examining Mr. Mosby's argument in detail—it is to be observed that it is specious and technical merely—it ignores wholly the paramount duty of the Government to administer the act and with it the treaty, which is of equal obligation as the supreme law of the land, that the letter and spirit of both shall be alike observed.

It is probable that, in accordance with the suggestion of the Chinese Minister, a form of certificate will shortly be prescribed for the use of our consuls in countries other than China.

The matter is now under the consideration of the Secretary of the Treasury. I am, etc., T. F. BAYARD.

Here again there are two remarkable statements to be considered: First, that Mr. Bayard says that it was determined to remove Mosby because of his insubordination, expressed in his dispatch of April 4, 1885. That dispatch, as has been shown, was not received by the State Department until May 13th, while Mosby's removal had been "determined" on some weeks previous. This is what might be called an example of departmental precedence of which there are very few on record. Second, Bayard writes to Withers on August 10th that the suggestions of the Chinese Minister (those contained in the unsigned memorandum of August 5th), were at that time under the consideration of the Secretary of the Treasury. Here, again, Mr. Bayard was more inventive than exact; for it was not until a week after that he submitted the matter to Mr. Manning. The date is to be found in the public documents—it was August 17, 1885. In writing to Manning, Bayard calls for a favorable consideration of the "friendliness" of the Chinese Minister's unaddressed communication and to "the good sense of the proposal" contained in the unsigned memorandum. Bayard goes on to complain of Mosby's insubordination, and ends by saying that "instructions will, therefore, be sent to Mr. Withers at an early day directing him to carry out the Treasury instructions," when, as a matter of fact, these instructions had been sent out a week before. This is an example of Bayardesque retrospection, which is amusing though by no means unique.

This letter opened Manning's eyes to what was going on, and he wrote back to Bayard that he must surely have overlooked the fact that the Treasury circular had been seriously amended since July. There must have been considerable worry in the Secretary of State's office when this note was received, and it was not until September 19th that Bayard summoned no courage enough to acquaint the terrible Cheng Tsao Ju with the sad news of the death of section 2 of the Treasury circular, and even then he had to do it through the proxy of James D. Porter as acting Secretary. The public documents are silent as to how Cheng Tsao Ju received this information, but it is known that Bayard accepted the dose, and, after waiting as long as he thought safe, wrote out to Withers in November, 1885, revoking the first orders.

Between whiles, however, Mr. Withers had succeeded in issuing quite a goodly number of Consular certificates which in good time were presented at the Customhouse in San Francisco, and then the fun began. Hager would not accept them, Bee complained to Cheng, Cheng worked on Bayard, Bayard appealed to Manning, Manning telegraphed special instructions to Hager, and Hager let the Chinese in on the certificates. The papers got hold of all this wire-pulling, and spoke right out in meeting about it. Morrow went with the papers to Manning, and by February, 1886, the kibosh was put on the matter, so far as the Treasury Department was concerned. In the State Department, however, Cheng was as strong as ever. He complained of the hardships suffered by his certified countrymen at the hands of the San Francisco customs officers in March, 1886, and came forward with the quiet little suggestion whether the rescinded sentence of the Treasury Department circular could not be restored. Again he wrote on March 24th urging the same thing, this time not in an unsigned memorandum but on a big sheet of paper addressed to his Excellency, T. F. Bayard, and signed in a mass of Chinese characters and green seals. This was too much for Bayard and on March 30th he addressed a long reply to the Chinese Minister. It is too long to give entire, but like all of Bayard's communications it contains two remarkable statements. The first is as follows:

The act of Congress of July 5, 1854, authorizing the execution of the provisions of the treaty, does not in terms do so with regard to certain of the exempted classes. It is silent as to Chinese persons who, being subjects of China, desire to depart for the United States from some other country than China.

This ought to be printed in parallel columns with his instructions to Withers, where he says that Mosby's argument is specious and technical and that the law must be observed in letter and spirit.

The second statement is as follows: The circular of the Treasury Department was designed to remedy the ambiguity of the statute, and the act of Congress in giving the warrant of law for such original certification by United States consuls was insufficient. It involved the absurdity of a consul certifying by his visa to the truth and sufficiency of his own certificate; and under it the consul was obliged to give official evidence of a matter not within his representative competency to certify. Hence this part of the Treasury circular was revoked on the 13th of July, 1885.

This language in its turn ought to be printed in parallel columns with Mosby's letter to the State Department, written April 4, 1885. This method of comparison would show that the language of insubordination upon which Mosby was officially stated to have been removed was now being used by Secretary Bayard as the highest kind of authority. Bayard feels the strength of the Mosby reasoning so thoroughly that he writes to Mr. Cheng that he is "constrained to reply that the reasons which led to the abandonment" of the section "are conclusive against its removal." He promises, however, to do what he can for the Chinese, and on April 2, 1886, writes to the President suggesting that Congress should be asked to remedy the existing laws on Chinese immigration by providing that when Chinese subjects, not laborers, come from a foreign place where no Chinese diplomatic or consular representative is found, they shall receive a certificate from the diplomatic or consular representative of the United States, which shall allow them to land. This was nothing more nor less than asking for the erection of the Treasury circular into a law. Cleveland fell into Bayard's line of thinking, and on April 6, 1886, sent a special message to Congress, recommending the framing and passage of the Consular Certificate bill. The message was referred to the Committee on Foreign Relations, and that committee refused to report it as a bill. They saw what an inundation of Chinese the measure would mean, and it should not be forgotten that among those most active in opposing the contemplated measure was that member of the committee, Senator Benjamin Harrison.