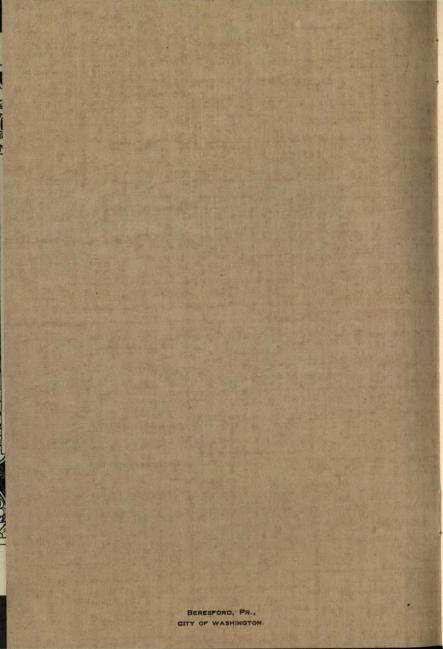


CHINESE INDEMNITY.

WAS IT A PUNITIVE MEASURE?

BY

JOHN W. FOSTER.



THE CHINESE INDEMNITY.

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(From The Washington Herald, Nov. 23, 1908.)

The coming special envoy from the Chinese Government to convey to the President of the United States its thanks for the remission of a portion of the Boxer indemnity has awakened new popular interest in that matter. A recent very interesting and instructive article in one of our leading periodicals gives the most authentic and intelligent account yet published of this somewhat intricate business.

But the writer of the article falls into a grave misapprehension in stating, referring to the Boxer indemnity, that "the damages asked for were punitive." If the indemnity was of this character, the writer would be quite right in his declaration that "the United States Government was, by every precedent, justified in holding the balance." But the fact is that the indemnity exacted of China was not punitive, but was intended to be in compensation for the actual expenses and losses occasioned to the Governments, companies and individuals on account of the Boxer uprising; and this is clearly shown by an examination of the negotiations (see Rockhill's report, appendix to United States foreign relations, 1901).

The diplomatic representatives of the foreign powers were quite severe upon the Chinese Government for the Boxer movement and did exact punitive measures of the harshest character, but these were kept quite distinct in the negotiations from the indemnity question. An examination of the final protocol of the powers shows what these punitive measures were. I enumerate some of them. Prince Chun, who has since become Emperor, was required to go on a mission to Berlin to express the regret of the Emperor of China at the murder of Baron von Ketteler ; the soldier who shot the baron was executed on the spot where the deed was done, although it appeared the soldier acted under orders ; and a memorial monument was required to be erected on the spot by the Chinese Government, with inscriptions of regret in the name of the Emperor in Latin, German and Chinese. A considerable number of the highest princes and public men who had taken part in the Boxer movement were required to be executed ; a number of others already dead were posthumously degraded; and others were banished or degraded from office. A high official was required to proceed to Japan to express to the Emperor regret for the murder of the secretary of the Japanese Legation. An explatory monument was to be erected in each of the foreign cemeteries where graves had been desecrated, to cost 10,000 taels for those at Pekin and 5,000 for those in the provinces. The examinations were to be suspended for five years in all places where foreigners had been massacred or suffered hardships. The Taku forts were to be razed, and other humiliating measures were exacted.

This long list of punitive requirements would seem to be sufficient to satisfy the most revengeful, and the language of the protocol justifies the conclusion that the 450,000,000 taels which represent the indemnities were not intended to be of that character. The protocol says: "This sum represents the total amount of the indemnities for States, companies or societies, private individuals," &c. But if any doubt could exist on the subject it is dispelled by the negotiations which led up to the protocol.

The project of an indemnity was first formulated by the French representative, as follows: "Equitable indemnities for the

governments, corporations and private individuals." This phraseology was adopted and used in all communications to the Chinese plenipotentiaries. Mr. Rockhill, the American representative, in reporting to Secretary Hay the demand made on China for the indemnity, quoted the word "equitable," and said "in other words, just and reasonable;" and in another dispatch to the Secretary he referred to the lump sum of the indemnities to the powers, "divided among them equitably according to the losses and disbursements of each." The Chinese plenipotentiaries from the beginning admitted their "liability to pay indemnity for the losses sustained."

The intent of the powers as to the character of the indemnities is further made clear by the rules which their diplomatic representatives adopted and by which, Mr. Rockhill reported, they were to be guided in "the adjustment and determinations of the amounts allowable on the claims of their nationals." An examination of those rules shows that the claims were to be allowed only for actual losses sustained by the Boxer uprising, and that no consequential, speculative, or punitive damages of any kind were to be allowed. At the conclusion of the rules it is stated that they have been adopted "with a view to putting governments, societies, companies and private individuals back in the position in which they would have been if the antiforeign movement of 1900 had not taken place."

Much of the time of the foreign repsentatives was taken up in discussing and determining the amount of the indemnities, but in that question only two considerations entered, to wit : the aggregate amount of the actual claims filed and the ability of the Chinese government to pay. At no time was there any suggestion of the inclusion of punitive damages.

The sentiment in the United States, which had its influence upon our government and which doubtless actuated Secretary Hay in deciding to release China from payments in excess of our just claims, was that we were exacting money that in equity did not belong to us, and that common honesty, not generosity to a friendly power, demanded that we should not require it. When the subject was taken up by Secretary Root this question was submitted to him and he decided that the indemnity was not punitive in its character.

This action of the United States is not without precedent. In 1858 our Government required China to pay over the sum of \$735,000, being the amount of claims of Americans filed in the legation. A domestic commission adjudicated the claims and found them greatly exaggerated. The unexpended balance remained in the United States Treasury for many years, and in 1885, upon a vote of Congress, \$453,000 was returned to China.

It is not surprising that upon a careful examination of its Boxer claims the Government of the United States found them to be excessive. They were compiled hurriedly soon after the stirring events of 1900, and were necessarily imperfect. Such has doubtless been the experience of other powers who shared in the indemnity. It has been hoped that they might be influenced by the action of the United States and voluntarily tender to China the remission of whatever excess has been shown over their adjusted claims. But, such action could hardly be expected if they were impressed with the fact that the indemnity was punitive in its character.

JOHN W. FOSTER.