NOTES ON MATTERS OF THEORY CONNECTED WITH THE SAAR PLEBISCITE

by

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The result of the Saar plebiscite, which in principle and practice was so splendidly conducted, has again raised the question whether it would not be expedient to hold a plebiscite, in order to settle the Hungarian problem. This question is being discussed with animation, not only in Hungarian, but also in British circles (see report on Colonel Moore's lecture in the last number of our Review). From a theoretical as well as a practical point of view the idea deserves careful consideration on the part of those who will have to answer to history for the future of Europe and the maintenance of peace.

Plebiscites are an institution of international law, and are based on the principles of selfdetermination and nationality.

HISTORICAL DEVELOPMENT OF SELF-DETERMINATION PRINCIPLE

The principle of the self-determination of the peoples was not invented by Wilson: it has its roots in centuries long past. Johannet, that excellent French theoretician, who was an authority on the nationality principle, records that, when in 1526 Francis I of Francis ceded *Burgundy* to the Emperor Charles V under the Treaty of Madrid, the Estates of Burgundy at Dijon protested energetically against Burgundy's being severed from France. At the time of the conflict Francis made the following statement: — "It lies in the nature of law that neither towns nor provinces may be annexed against the will of the inhabitants and citizens, *but only with their express consent*".

When Henry II of France, in answer to the appeal of the German Protestant princes, first occupied, then took possession of, the territories belonging to the bishoprics of Metz, Toul, and Verdun, Robert de Lenoncour, Bishop of Metz, addressed the following plea to the King: — "The King has come as a deliverer. Then let him treat the population as good French citizens, and, abstaining from the use of all coercive measures, let him call them to a free plebiscite".[1]

These instances taken from the history of France show how even centuries ago public opinion felt that to traffic in territory was an injustice, unless the consent of the population had been asked and given. This view taken by public opinion was upheld by *Grotius*, the great jurist of the XVII century, in his book "*De jure belli ac pacis*". In volume II, chapter VI, he propounds the thesis that the consent of the population of a territory is necessary to its incorporation in another State.[2]

The *French Revolution*, starting from the principle of the liberty of the nations, arrived at the idea of self-determination. According to its tenets nations were free, and a war of conquest was an attack upon the liberty of other nations. Consequently the annexation of territory by any State was justified only in so far as the population of that territory was willing to accept the change. Acting on this principle the *Constituente*, on September 14th, 1791, annexed the provinces of Avignon and Venaissin (which till then had belonged to the Pontifical State), on the ground that the majority of the population — 59 parishes out of 98 — had decided in favour of union with France. In the same manner, in accordance with the wishes of the population (583 villages and towns out of 658), the Convent annexed Savoy and Nice (Alpes Maritmes), as well as Mulhouse and several towns in the Rhineland and Belgium.[3]

At the Vienna Congress *Alexander I*, Czar of Russia, expressed the view that nationalities cannot be driven from one State into another like flocks of sheep.[4] The same opinion was voiced by Woodrow Wilson, President of the U. S. A., in his speeches made on February 11th and July 4th, 1918, when he said that peoples and provinces should not be transferred from sovereignty to sovereignty, as if they were mere chattels or pawns. We know that when the Central Powers laid down their arms they had pinned their faith on Wilson's Points, particularly on the principle of self-determination, and that the Entente itself, in a Note to the Government of the U. S. A. dated November 5th, 1918, undertook to conclude peace with Germany on the basis of the principles contained in Wilson's speech to the Peace Conference on January 6th 1918 (the famous 14 Points) and in conformity with other principles set forth by him in statements made later on.

POST-WAR PLEBISCITES

And yet, with the exception of certain parts of East and West Prussia, Upper Silesia, and Schleswig, the peace concluded with Germany made no provision for an immediate plebiscite. The socalled "*consultation populaire*" which took place in the district of Eupen and Malmédy cannot be regarded as a real plebiscite, for the voting was not secret — open lists protesting against the surrender of

[1] „La principe des nationalités" Paris 1918.

[2] „In partis alienatione aliud insuper requiritur, ut etiam pars, de qua alienda agitur, consentiat."

[3] „Plebiscite and Referendum." Handbook prepared under the direction of the historical section of the Foreign Office. No. 159. London 1920. cf. Johannet op. cit. and Felix Freudenthal's „Die Volksabstimmung bei Gebietabtretungen und Eroberungen" Erlangen 1891.

[4] See Jacques Fouques-Duparc: "La protection des minorités de race, de langue et de religion": Paris 1922, p. 141.

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the territory to Belgium being signed in the presence of the authorities. The plebiscite in the Saar District, which took place on January 13th last, was based upon the Treaty of Versailles. Still less account was taken of the principle of self-determination where the rest of the defeated countries were in question. The treaty with Austria ordained only one plebiscite, in *South Carinthia;* while the *Treaty of Trianon concluded with Hungary did not incorporate a plebiscite at all.* The plebiscite held in the town of Sopron and its environs in the December of 1921 was not provided for by the Trianon Treaty, but was the consequence of the *Austro-Hungarian Convention* concluded in Venice on October 13th 1921, with Italy as intermediary. The treaty signed by *Bulgaria* similarly makes no mention of settlement by way of a plebiscite. The *Treaty of Sévres*, on the other hand, which was concluded with *Turkey*, but was never ratified, stipulated that if the *Kurdish* population applied to the League of Nations within six months of the coming into force of the treaty with proofs that the majority of the population desired to be independent of Turkey, and if the League considered them capable of an independent existence, they should be allowed to form an independent State. (Article 66.)

Besides, this treaty guaranteed to the local diet in *Smyrna*, which had been left under Turkish sovereignity, but under Greek administration, the right to submit to the League of Nations, within five years from the date when the treaty became valid, a request that the population be attached to Greece, in which case the League was to order a plebiscite and determine the conditions under which it should be held. In both of these instances a plebiscite would have been against the interests of the defeated State. It is interesting to note that in terms of the resolution taken by the Supreme Council of the Peace Conference, a plebiscite was to have been held in the district of *Teschen, about the possession of which the Czechs and Poles could not agree*, and in a comparatively small part of the counties of Árva and Szepes which had been taken from Hungary and allotted to the Czechs; the Spaa Conference of Ambassadors, however (July 21st 1921), acting as arbitrary tribunal, ordered the latter territory to be divided between the two contestants.

CHARACTERISTIC ERROR OF PEACE CONFERENCE

We see then that the Paris Peace Conference never contemplated the idea of a plebiscite in connection with Hungary or Bulgaria. The preamble to the minority treaty concluded with Czecho-Slovakia on September 10th 1919 at Saint-Germain, in which the recognition of the Czecho-Slovak Republic was definitively confirmed, lays stress upon asserting that the population of Slovakia had entered into partnership with Bohemia of their own free will, and that Ruthenia had joined that country of her own accord. According to the preamble to the Yugoslav minority treaty, the Serbs, Croats, and Slovenes too had united in one State by common consent. These statements are an attempt to create the impression that Slovakia and Ruthenia were annexed to Czecho-Slovakia, Croatia and the Slovene districts to Yugoslavia, on the principle of self-determination. Even before the Peace Conference closed it was evident that these allegations — at any rate so far as the Czechs and the Slovaks were concerned — were a misrepresentation of the facts. As early as February 20th, 1920, the Hungarian delegation, when presenting their memorandum, subjoined a document containing information sent by Šrobár, Czecho-Slovak Minister, to the Slovak League (Slovenská Liga) in America. In that paper Šrobár marshalled the following arguments in support of his objection to fulfilling the agreement concluded between the leaders of the Czech and Slovak associations in America at Pittsburgh on May 31st 1918, and signed also by Massaryk, who afterwards became President of the Czecho-Slovak Republic. In terms of this agreement Slovakia was to have been given a separate national assembly.

His arguments were:

"In accordance with the Convention of Pittsburg Slovakia ought to be given a legislature of its own. Let us consider this soberly. Slovakia has about 3 million inhabitants, of which 1,600.000 are Slovaks, 250.000 Jews, 500.000 Ruthenians, 155.000 Germans and more than 500.000 Magyars. If the Slovak legislature had 300 members, 22 would be Jews, 50 Ruthenians, 15 Germans and 53 Magyars, so that 140 non-Slovaks would be opposed to 160 Slovaks. But the majority of these latter would consist of the so called "Slovak Octobrists". The Slovaks would have a majority of 20, but this would not be a majority with which government could be carried on even for fourand-twenty hours. Let us not forget the large number of the Hungarian intelligent classes; nor that Slovakia is overrun with Magyars, and "Magyarons". Can we suppose that not a single Slovak elector will vote for a Magyar or "Magyaron?" Would this be possible at the present day? Has the Slovak nation awakened in these eight months to the fact that it must vote only for Slovaks?! Do our people know who is a Slovak and who has gone over to the other side? There are counties (Bars, Hont, Nógrád, Abauj, Zemplén, Szepes, Sáros etc) in which there is not one loyal Slovak whom we could entrust with the leadership of the people. Imagine a Slovak National Assembly where no Slovak member may miss one sitting! And imagine one with an opposition of 140 members! — not a Slovak opposition, but one composed of alien members. Could this be called a Slovak National Assembly? It would rather resemble a pot-house in which the guests are quarelling over their cups."[5]

This clearly proves that the Czecho-Slovak Government mistrusted not only the Magyars, Germans, Ruthenians and Jews, but also the Slovaks. There is no doubt that had the Peace Conference been aware of the real state of things before the signing of the Czecho-Slovak minority treaty on September 10th 1919, no mention would have been made in the preamble about the Slovaks having joined Bohemia of their own free will.

This one single example is enough to show how diametrically opposed to the principle of self-

[5] "The Hungarian Peace Negotiations", Budapest 1922. Vol. II., p. 129.

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determination was the cutting off of two-thirds of Hungary's territory. And what has happened to the Slovaks and a section of the Ruthenians, who, because of their pro-Hungarian feelings, have been dubbed "Magyarons" by the Czechs, has hoppened also to the Croats and perhaps even to a considerable proportion of the Transylvanian Rumanians. Had they been asked their opinion and allowed to express it freely, the Slovaks and Ruthenians would never have voted for political union with the Czechs, nor would the Croats and Transylvanian Rumanians have expressed any desire to unite with Yugoslavia or Rumania respectively. And surely no manner of doubt can be entertained concerning the wishes of the Magyars, Germans, Vends, etc. severed from Hungary.

The principle of self-determination cannot be enforced except by asking the nationalities that have been torn away from their old sovereignties and attached to alien States, whether they are content that it should be so; and the only way to obtain an answer to that question is by means of plebiscites. Failing this, the section of the population which is opposed to the annexation of the territory in question will always feel that an injustice has been done. They will never acquiesce in the change, and, asserting that they represent the majority, will continue to fan the flames of irredentism against the State in which they have been incorporated. It is therefore in the interests of the victor State just as much as of the defeated State to ascertain by plebiscite the wishes of the majority of the inhabitants; for then the party thus outvoted is not entitled to claim that it is the real expression of the opinion of the population.

CONCERNING THE "NATIONALITY" PRINCIPLE

The justifiability of the postulate of a plebiscite is supported also by the nationality principle. This principle, first proclaimed in science, in his inaugural lecture "Della nazionalità come fondamento del dritto delle genti" delivered at the University of Turin in 1851, by Pasquale Stanislao Manchini, the eminent Italien authority on international law, means — as is well known — that the persons belonging to one and the same nation should form one State. This thesis — the fundamental conception underlying the creation of most of the States established in the nineteenth and twentieth centuries — is based upon the perfectly correct consideration that the ethical foundations of the State must be supplied by the force of union inherent in national feeling. But there is one great disdvantage about the thesis, — the fact, namely, that the idea of "nation" is not uniform in the case of all the various peoples of Europe, for which reason those various peoples have multifarious conceptions of the manner in which the nationality principle can be realised.

According to the idea in force in the West, by "nation" we mean the whole body of nationals (in the political sense of the word.)This was the conception in force at all times in Hungary too, as may be seen from the Preamble to the 1868 Nationality Act, which declares that the Hungarian nation embraces all Hungarian nationals (citizens of the Hungarian State). As contrasted with this legal interpretation of the term "nation", which has really not always been quite in place in Central and Eastern Europe, where several peoples, themselves once state-builders, lived under the rule of a foreign people and indeed regarded themselves as distinct from that people, the Italians, Germans and Slavs — under the influence of their efforts to obtain independence or to create a United State — developed a different conception of "nation", which has always regarded the nation as an ethnic formation, — a conception losing sight of the fact that with these peoples too the ultimate aim of national union is after all the formation of a State, thus being of a political character. Attempts have been made to determine the meaning of the term "nation" by objective criteria, defining it as a racial, religious, linguistic, cultural, historical, geographical etc. community. However, seeing that not one of these criteria is to be found without exception in every community which undoubtedly believes itself to be a nation, and seeing that these criteria must be in evidence in multifarious combinations in the several peoples, the objective definition has proved a failure, for which reason — especially in German science — the tendency now prevailing is that which finds the real meaning of "nation" to be the collective desire for symbiosis, — the so-called "national consciousness" —, and determines the national status of the individual according to which nation he desires to belong to or which nation he desires to opt for. This conception may be traced back to the famous definition of Renan — "la nation est un plébiscite de tous les jours" — meaning that the circle of individuals forming the nation changes and fluctuates from day to day. This so-called "subjective" theory runs counter to the fact of common experience that the several individuals do after all derive their profession of membership of a particular nation from certain material causes (e. g. birth, language, history, etc.); while recently the so-called "combination" theory is beginning to take root, this theory being to the effect that, though national status is closely dependent upon objective characteristics, — seeing that in the several individuals these causes may be of varying nature and may appear in various combinations —, here too the decisive factor in determining to which nation a person belongs, is that person's own will.

It would be a far cry to subject all these theories to critical analysis. The only reason why we thought it necessary to mention them is that they show clearly the hybrid and uncertain character of the ethnic conception of a nation. Nevertheless, the treaties of peace concluded after the end of the Great War, wherever they applied the nationality principle at all, took as their basis the ethnic conception of the nation, — and that too in a form which makes "ethnic" mean simply language or race. Thus, the establishment of Czecho-Slovakia and Yugoslavia was effected on the ground that the Slovaks and the Czechs combined constitute a "Czecho-Slovak" and the Serbians, Croatians and Slovenes a "Yugoslav" nation. Both fictions are equally absurd and untenable. The Slovaks constitute a nation differing from the Czechs; not only because they have a literary language of their own which has nothing in common with that of the Czechs, but also because they have developed an independent political consciousness of their own due alike to their deep religious feelings and to the fact that their history — centuries spent in community

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with another country (Hungary) — and consequently their traditions and views of life, differ from those of the Czechs, while — last, not least, — a role of no less significance is played also by the force of separation latent in the geographical situation of their country and the dividing line of the Carpathians. Although the literary language of the Croatians is almost identical with that of the Serbians, in their case too a different political consciousness has been developed owing to their using the Latin alphabet as against the Cyril alphabet used by the Serbians, while they are Roman Catholics and the Serbians are members of the Orthodox (Greek Oriental) Church, and for 500 years they enjoyed an autonomy of their own as part of the Hungarian Kingdom.

Nor can a nation be regarded as simply a linguistic community. A hundred years ago there were very few persons already who knew Celtic; but then too the Irish question was the cause of the greatest anxiety to the British Government. The majority of the inhabitants of the United States of North America speak the same language as that used in Great Britain; nevertheless, it would be a bold thing to assert that the British and the Americans constitute a single nation. It is only in recent decenniums that the literary language of Norway has shown a tendency to become differentiated from Danish; yet the Norwegians have always been a different nation. This differentiation between language and nation was illustrated in an interesting manner by certain plebiscites held since the Great War. In Upper Silesia there were many cases of persons speaking in their homes Polish — or a dialect very like Polish — having voted for Germany. The majority obtained by Austria in the plebiscite in South Carinthia was due solely to a section of the inhabitants of Slovene nationality having voted for that country. The reason why the Hungarian national idea won the day in the plebiscite held in Sopron and environs was due to a considerable proportion of the inhabitants whose mother tongue is German voting for incorporation in Hungary. The most serious errors may arise from a territory being annexed to a particular State simply because the majority of its inhabitants happen to speak the same language as the people ruling in that State.

Consequently, the nationality principle cannot be carried into effect — even in its ethnic interpretation — unless a plebiscite is held to decide whether the inhabitants of the territory in question really regard themselves in feeling too as belonging to the nation which speaks the same or a similar language. It is no mere coincidence that the pioneers of the nationality principle should have been decidely in favour of the principle of plebiscites too. When "Italia Unita" was established, the Italian Government ordained plebiscites everywhere for the purpose of proving the justifiability of incorporating in the Kingdom of Itally all the miniature States which had previously possessed an independent existence. In 1860 Italy surrendered Savoy and Nizza to France only on condition of a plebiscite being held (the plebiscite resulted in France obtaining a large majority). After the Austro-Prussian War Napoleon III., who acted as mediator and was himself one of the most typical champions of the nationality principle, did all in his power to secure the ultimate fate of Schleswig being decided by a plebiscite. Therefore, the provisional Treaty of Nikolsburg and the Treaty of Prague (August 23rd., 1866) both provided that North Schleswig was to be surrendered to Denmark, should its inhabitants by free suffrage express a wish to be incorporated in that country. However, Prussia — or rather the German Empire — unfortunately failed to carry into effect the pertinent provision (Article V.) of the Treaty. After the victory won by the Germans in the Franco-Prussian Warin 1871, as contrasted with the German Treitschke a large number of eminent French scientists — appealing to the nationality principle — demanded that the population of Alsace-Lorraine should be put to the vote. One of the main causes of the Great War might have been eliminated as far back as 1871, had the inhabitants of Alsace-Lorraine been asked to vote on the question wheter they regarded themselves as belonging rather to the German nation tc which they were linguistically and racially akin or to the French nation which had been their political rulers for 150 years and had transformed them "in their own image". Nor would the Schleswig question have embittered relations between Germany and Denmark — indeed, it might have been eliminated fifty years prior to the Treaty of Versailles —, if Bismarck had fulfilled the obligations undertaken by Germany under the Treaty of Prague and had put the question as provided to the inhabitants of North Schleswig.

CREATION OF SUCCESSION STATES NOT BASED ON PRINCIPLES

The political distribution of the Danube Valley in force today is fraught with danger simply because the Paris treaty-makers ignored all questions of principle and thought they could settle the problems that had arisen by edict. From this point of view too the case of Czecho-Slovakia is extremely instructive. This State was created under the nationality principle, on the strength of which that State is really entitled to claim the territories of Bohemia, Moravia and Silesia inhabited by Czechs. The German inhabitants of these provinces were incorporated in the new State on the plea of a historical right, seeing that the provinces had been possessions of the Czech Crown until the Battle of Weissberg (1621). But the latter principle was not enforced in the case of Hungary, who was deprived of Slovakia and Ruthenia, though she had a historical right to these territories which was much stronger than that of the Czechs to the territory inhabited by the Sudete Germans, seeing that those territories had belonged to the Crown of St. Stephen from the eleventh century until 1918. The districts of Slovakia inhabited by Slovaks were claimed by the Czechs on the absurd plea that the Slovaks and the Czechs form a single nation — the so-called "Czecho-Slovak" nation — thus once more returning to the nationality principle; while when annexing the territories of Ruthenia inhabited by Ruthenians reference was made to "voluntary adherence" — that meaning an application of the principle of self-determination. However, the Czechs did not shrink even from laying hands also on the southern sections of Slovakia and Ruthenia inhabited by pure Magyars; in that case pleading strategical reasons, seeing that no arguments coudl possibly be adduced by resort even to an absolutely arbitrary explanation of the principles of self-deter-

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mination and nationality. This all reminds us vividly of Phaedrus's fable about the king of animals in default of any other argument carrying off his booty simply because he was a lion. The Czechs shrunk instinctively from the idea of a plebiscite; and when, early in 1919, Thomas Masaryk was asked whether there would be a plebiscite in Slovakia, the President of the Czecho-Slovak Republic answered with a straight "no", saying that the Hungarians had so completely oppressed the Slovaks that they had never had an opportunity to think politically and were therefore unable to decide their own fate.[6] But surely in the case of a people which has been oppressed the "liberators" would have no reason to fear that people voting for the "oppressors" and not for the "liberators", — even though that people has not studied political science. Only in one place — in their dispute with Poland — were the Czechs ready to submit the question to a plebiscite; though later on they thought it better after all to come to an agreement with the Poles and to divide the territory in dispute without consulting the wishes of the inhabitants of Silesia concerned.

THE HUNGARIAN THESIS

Historical right, self-determination, the nationality principle, geographical, economic and strategical postulates — were all alike arguments in the intellectual armoury of the creators of Czecho-Slovakia, Yugoslavia and Rumania to be dragged out at random to suit the exigences of the particular given case. As a consequence the creation of these States was not based upon principle. The Hungarian position, on the other hand, is simple and clear as daylight. We do not talk of historical rights, — do not put forward geographical or economic arguments or refer to any military moments, although a history of a thousand years, the ideal geographical, economic and strategical unity of pre-War Hungary, the impossibility of defending Hungary's present frontiers, and — last, not least — the economic misery today ruling in the territories severed from Hungary, — arguments which are all in our favour; we merely demand the enforcement of the principles of self-determination and nationality. Should the enforcement of these principles made such a procedure necessary, we are prepared to agres to a plebiscite and accept in advance the decision of the inhabitants of the severed territories, — naturally presuming that the same measures to safeguard the justice and impartiality of such a plebiscite would be taken as were in force recently during the plebiscite in the Saar District. So far as concerns the Magyar territories severed from the mother country inhabited by Magyars living in compact masses along the frontiers of Hungary, we believe that it would be superfluous to put the same to the vote, seeing that there can be no question of those persons, despite the persecution to which they are being subjected under a foreign rule, not desiring to be re-incorporated in Hungary. However, should the definitive decision of the fate of the whole territory severed from Hungary require to be taken by putting the whole population to the vote, no objection would be raised to such a procedure either. We could not, however, agree to the present political position of certain territories severed from Hungary being regarded as definitive simply because official statistics would fain make the populations of those territories seem to be non-Magyar in tongue. For, apart from being unable to accept as trustworthy the statistics of the Succession States, the mere fact that a person is registered as a Ruthenian by tongue does not by any means prove that the said person is unable to be heart and soul a real Hungarian. Only a secret plebiscite, when the person in question is at liberty to express his national conviction freely without any pressure from without, is likely to show clearly and definitively the real nationality conditions in force. But Hungary, who for many centuries was the home also of many non-Magyar nationalities, feels a duty towards these peoples impelling her to demand on their behalf too that the principle of self-determination should be enforced. So the peoples should decide for themselves whether they wish to remain under the sovereignty of their present rulers or whether they desire to form an independent State or — finally — whether they desire to be re-incorporated in Hungary? If the Succession States have a clear conscience, they must also consent to an appeal to the judgment of the peoples and must make it possible to have these questions settled once for all in this manner, thus preparing the way for an era of peace and quiet work to ensue at last in the Danube.

Objective foreign observers would be justified in pointing out that the Little Entente States should be the last to shrink from a plebiscite, seeing that they have had plenty of opportunities during the last fifteen years to influence the peoples severed from Hungary and to convince them of the superiority of their governments. Then why are the "liberators" afraid that the long-persecuted "oppressed" will vote for the "oppressors" and not for the "liberators?"

The sense of responsibility of the Powers concerned afforded the inhabitants of the Saar District an opportunity to return to their own country. The time has come for an opportunity to be given in the Danube Valley too to as many people as possible to belong to the country which they regard as their own. The best solution would appear to be for the Little Entente States also to agree to this solution and to conclude treaties for that purpose with Hungary direct. The General Assembly of the League of Nations has it in its power to accelerate such a solution by issuing — under Article 19 of the Covenant — a manifest relating to the revision of the Treaty of Trianon addressed to the Members concerned, pointing out also the fundamental principles which it thinks expedient to enforce in connection with the plebiscite of the interested inhabitants. By its work in preparation for and in execution of the plebiscite in the Saar District the League certainly enhanced its authority. How mush greater would its prestige be if if could by the application of the same methods succeed in eliminating the burning problems of the Danube Valley. It would seem that the Rome and London agreements are to be followed by serious negotiations for the purpose of settling those problems. We must realise that no solution of these problems is conceivable which is based upon any principles differing from those dealt with above.

[6] Masaryk: "Cesta democrace". Praha 1933. Vol. I, p 471.

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