

Of the American Commonwealth as it is at present Washington must be regarded rather as the father than the founder. At least, if he was really the founder, and if what we see is right, he builded much better than he knew. He broke in such a way as fate unhappily had ordained the umbilical cord, and set the transatlantic offspring free from the European mother. By his wisdom, his force of character, his disinterestedness, the influence of his reputation, he mastered the confusion which followed the rupture and brought about reasonable settlement. His legal Constitution still remains; but the soul and the real working of the machine, how different from his conceptions! A community of freehold farmers in the North, and planter gentlemen in the South, with a moderate commercial element, all under the leadership of an aristocracy of education and intelligence—such, apparently, was his ideal; such, at all events, was the Commonwealth of a genuine Democracy with Jackson into wealth which he founded. We can hardly doubt that the the White House would have impressed him as it did the surviving statesmen of his school. The table preserved in the White House on which Old Hickory played poker with the members of the Kitchen Cabinet, though it is a most venerable relic in our eyes, could hardly have been so venerable in the eyes of Washington. Finally, the American polity is pretty much now what it was when Washington left it, for slavery was comparatively of so little importance in his day that its elimination has only brought matters back in that respect pretty much to what they were. But whatever the form may be, the force which now governs is that of party. Whether the mode in which party governs is that of the Cabinet or that of legislative committees appointed by a party Speaker matters comparatively little, since the effect both as to the policy and as to the administration is the same. The political creed has adapted itself, as it always does, to the fact and to the interest of those who rule; and we are bidden to believe that Party is the normal and more than the normal, the only possible instrument of government. But party was what Washington most abhorred. He looked upon it as a passing malady of which the body politic had to be cured, and of which it might be cured by combining the leaders of opposite parties in the same Cabinet and making them serve the State together. How he expected large constituencies ultimately to be organized for the purposes of political choice and action without the machinery and discipline of party he might have found it difficult to say; but it does not appear that he exercised any forecast in this direction. Probably he thought that nominations would be settled and issues made up in the course of nature by the influence of the "principal gentlemen." From Presidential elections as at present conducted, with the carnival of intrigue, corruption, calumny, and passion which they and similar contests in all countries for supreme power under the elective system engender, we may be sure that he would have turned away in sorrow and disgust. Nor can we imagine him going through the endless interviews with office-seekers which a newly elected President now endures, or debating the claims of local wire-pullers to post-offices which now proverbially are about the most thorny of Presidential cares. One who has witnessed that scene must wonder not that the politicians are no better than they are, but that they are not much worse. Washington's spirit bore up against the winter at Valley Forge, but it would scarcely have borne up against the first month in the White House.

Would Washington, if he were alive now, be elected President? On his military record it cannot be doubted that he would. For of all political capital military glory is evidently still the most available. Jackson, Harrison, Taylor and Grant were elected Presidents on their military record alone. Hayes, Garfield and the present President were helped by it in their election. Scott, McClellan and Hancock were nominated on the same ground. The tendencies of American Democracy in this respect present a curious and paradoxical contrast to those of an old war power like England, which cannot be said ever to have treated military glory as a title to the highest civil office. Wellington, who is often cited by American historians as a parallel to Jackson, though he owed his position to his victories, had also shown high qualities as a statesman, albeit in a Conservative way: had acted on the grandest scene as a diplomatist, taking a leading part in the settlement of Europe after the fall of Napoleon; and was the real political leader of his party. The national monuments, the national museums, the statues in the squares and streets, the print-stores, the magazines, everything that appeals to the popular taste shows us that, in spite of all the enlightenment and philosophy, the popular taste still is war and that the man on horseback is still the darling of the popular heart. Besides, military glory escapes the rivalry and envy which wait on the upward steps of Clay or Webster, and at last snatch the great prize from his hand. As a victorious soldier, then, Washington would have been as sure of his election as were Jackson and Grant. But on the score of his civil character or merits it does not seem by any means likely that if now alive he would be elected President. It seems not very likely that he or any statesman of his group, excepting Jefferson, would be prominent in public life or even in politics at all. Only by supposing a total transformation of his nature can we conceive him for the sake of place or political distinction submitting his conscience to party discipline, embracing the party code of morality, learning the arts of the demagogues angling for votes by hollow professions and compliances, playing the rhetorical tricks of the

stump, manipulating caucuses, concocting platforms and busying himself impishly in the working of the party machine. The tendency of universal suffrage combined with the demagogic system of government in all countries alike, and not least in England, is to eliminate the Washingtons from public life. Whether they will ever get back again by another road is the secret of the political future. But we must repeat that if the American Commonwealth as it exists or anything that resembles it in any other country is the ideal, and if Washington was really its founder, he builded much better than he knew.

GOLDWIN SMITH.

GEMMILL ON DIVORCE.*

THE subject of Divorce is one of the gravest import to man, as an individual, or to society, as a whole, and from the dawn of human history to the present how it has left its solemn impress upon the religious, parliamentary, and judicial records of the world. We find mention of it as early in the Sacred Volume as the Book of Leviticus, and its latest reference to it may be found in the warning words of the august founder of Christianity himself: "Whosoever shall put away his wife and marry another, committeth adultery against her. And if a woman shall put away her husband and be married to another, the same committeth adultery," in St. Mark x. 11-12. From these and the preceding verses it is evident that the author of Christianity disapproved of divorce, and the dividing line which to him separated it from adultery was where it is obtained on the ground of fornication, St. Matt. v. 32; but even there the solemn warning is given, "Whosoever shall marry her that is divorced committeth adultery." We may fittingly close our reference to the Scriptures with the weighty words, "Righteousness exalteth a nation," Prov. xiv. 34, and after carefully considering the testimony which our domestic and social life presents to the world on the momentous question, well may we say with grateful hearts, Thank God we are Canadians! Through all the years that have passed since as a people we attained to man's estate and obtained responsible government, thence to the maturer stage of our national life as a Confederate Dominion, and so to the present day, the Canadian people, legislators, and statesmen, have stood firm and true to their high trust in this matter in spite of the lewd example of the neighbouring republic, and the immoral desires of her would-be imitators, and to-day with our simple procedure before a tribunal of competent men, chosen from the highest branch of our Legislature, hedged in and surrounded by all the safeguards that wisdom and experience can provide after proper publicity, ample notice, and due delay, the cases involving this grave question are dealt with in a manner and with results that challenge the admiration of the world.

In considering Mr. Gemmill's work it is interesting to note in his opening sketch of the origin and history of divorce in England, that "by the law of England the marriage contract was indissoluble, and when once it had been constituted in a legal manner there was no means of putting an end to it in any of the courts." Parliament, however, introduced a law for divorce in case of adultery. In Roman Catholic times marriage was deemed "a sacrament, and indissoluble," while Cranmer and his associate reformers held "the advised and lasting belief that a more extensive liberty of divorce ought to be allowed."

This view was gradually developed in the *Lukenor*, *Lord Roos*, *Lord Macclesfield*, and *Lord Norfolk* cases, where divorce was granted by Parliament on special grounds until in the *Box* case, in 1701, when Parliament granted a divorce *a vinculo* without any special or peculiar reason on which to found it—such as had been the moving cause in the prior cases. This divorce was granted on a Bill intitled, "An Act to dissolve the marriage of Ralph Box with Elizabeth Eyre, and to enable him to marry again."† It might be added that by the old rule proof of adultery would warrant a divorce from a wife, but it would not suffice in the case of a husband where proof of such heinous crimes as incest or bigamy was essential.

In Canada, however, the power of dealing with and adjudicating upon applications for divorce was retained by the Legislature, although the Imperial Government suggested in 1859 the advisability of establishing a Divorce Court in Canada. Since Confederation the Parliament of Canada has passed twenty-three bills dissolving marriage on ground of adultery, two annulling fraudulent marriage, and one granting separation, and rejected ten applications for divorce, and in all cases exercising "their own wisdom and discretion," freed from any "hard and fast" rules of limitation, in many cases pursuing the just and equitable course of granting to a wife the same measure of relief as would be awarded to a husband.

In considering the great good which our restriction of the power to deal with divorce to Parliament alone has conferred upon Canada, we cannot refrain from quoting part of the lofty and convincing argument of the Hon. Senator Gowan, when the matter was under discussion in the Senate: "Parliament . . . decides whether the charges are proved, whether they constitute such a case as should entitle the party to a special Act for relief, and

*"The Practice of the Parliament of Canada upon Bills of Divorce," including an historical sketch of parliamentary divorce and summaries of all the Bills of Divorce presented to Parliament from 1867 to 1888, also notes on the Provincial Divorce Courts, etc. By John Alexander Gemmill, of Osgoode Hall, Barrister-at-law. Toronto: Carswell and Company.

†A title used in subsequent bills for divorce till 1858, when the Court of Divorce and Matrimonial Causes was founded.

what relief, if any, should be granted to the party in view of all the circumstances, and Parliament may, and ought always to, have in regard not merely the question as it affects the parties, but the effect in relation to the morals and good order—the effect which the passing of a particular law might have upon the well-being of the community. Parliament, as the supreme power, has its duties and responsibilities, and cannot compromise the well-being of society which has been entrusted to it under the constitution."

Such considerations as these have rendered fruitless the efforts of those who have advocated upon the floor of Parliament the establishment of a divorce court.

We cannot help commending the pure and patriotic spirit of our legislators, who have unswervingly denounced and defeated the efforts of those who have sought to establish on a basis of authority in Canada the low and degrading system of divorce which is current in the United States.

In considering the subject of marriage, the learned author quotes the forcible and impressive words of Lord Justice Brett: "Marriage is not, as is often popularly stated, a contract. If it were it could according to every principle of the law of contracts be rescinded by mutual consent. But it cannot. There is a contract before marriage, which is a contract to marry; but marriage is the fulfilment of that contract, which is then satisfied and ended, and there is no further contract. Marriage imposes a *status* which was by the law, before the statute, imposed upon the person forever," which view is sustained by an eminent Canadian authority, who says: "It has been fairly urged that if marriage could be regarded as but a contract, its nature, obligation and privileges must be sought in the terms of the contract: but it is an estate, and as such they must be sought in the nature of the estate, as instituted and expounded by the founder, that is found in the word of God."

With reference to Mr. Gemmill's work, we greet it as a decided acquisition to the legal literature of Canada, and commend it to the position of the authoritative Canadian text book on the important subject with which it deals. It is clear and comprehensive in its arrangement and details; and without attempting to present an elaborate and exhaustive treatise, the learned author is to be congratulated upon the mastery of his subject, which has enabled him to compress so much valuable matter into so small a compass, and the ability which has enabled him to treat it in a manner which renders it not only a most effective aid to the legal practitioners in its reference to the law of England, Ontario and the Provinces, the parliamentary rules, regulations and practice, including the new rules of the Senate and citations and notes of cases, forms and notes on evidence, but also to members of Parliament and all others interested in this great social and domestic question. We conclude with a reference to the comparative table of divorce in the United States and Canada, which shows that from 1867 to 1886 inclusive, there were 328,613 divorces granted in the United States, and 116 in Canada, being in proportion to population about 1 to 150 persons in the United States, and 1 to 37,283 in Canada. We may add that the mechanical features of the book are worthy of the reputation of the publishers.

READINGS FROM CURRENT LITERATURE.

THE USE OF THE TELEPHONE ON RAILWAYS.

A NOVEL application of the telephone has been made on the railway between Saint Valeric-sur-Somme and Cayeux (France), with a view to facilitate communication between a train broken down on the line and the nearest station. *Industries* says the stations on this line are already in telephone communication by means of an overhead wire, and in the guard's van of an experimental train was fitted up a telephone, with battery of ten Leclanche cells and call bell. One pole of the battery is put to earth by being connected to the framework of the guard's van, and the other is joined in the usual way to the telephone, the other terminal of the latter being connected with a wire, by which connection with the existing telephone line can be made at any point. To facilitate this operation the wire is inclosed in a light steel tube, long enough to reach the overhead wire from the roof of the van, and provided at the end with a hook for attachment. Upon ringing up, the stations in front and rear of the train receive the signal, and conversation can be carried on with both simultaneously. The object of this arrangement is to enable the guard of a train, delayed or broken down on the line between two stations, to call for assistance. The apparatus carried in the guard's van is self-contained, inclosed in a box, and weighs only about twenty-five pounds.

THE WINTER SLEEP OF THE CANADIAN JUMPING MOUSE.

In the course of an interesting article on "Sleeping through the Winter," the *Standard* points out that an interesting observation was made in Canada by General Davies on the profound winter sleep of the jumping mouse, and published, with a picture, in the "Linnean Transactions" for 1797. The little animal, which was a curiosity in the summer time for its flying leaps through the long grass, was lost sight of about the month of October, and was not seen again until the month of May. General Davies solved the question of what became of it all those months. A labourer, digging the foundations of a garden-house near Quebec in the spring, turned up with his spade