

DEFECTIVE STATE OF INTERNATIONAL LAW.

and all subsequent papers and proceedings in the event of an appearance not having been duly entered, may be served on the agent of such corporation, at any branch or agency thereof, or on any station master of any railway company, or on any telegraph operator, or on any express agent having charge of an express office, shall for the purpose of being served with a writ of summons issued against such corporation, or any paper or proceeding as aforesaid in the event of non-appearance, be deemed the agent thereof.

12. In all cases where pleadings or notices of trial or countermand of notice of trial in either of the Superior Courts of Common Law, or in the County Court, are served upon the agent of the Attorney in the cause in Toronto two clear additional days to the time now allowed by law for such service shall be added.

13. That section twenty-eight of chapter thirty-five of the Consolidated Statutes for Upper Canada be repealed and the following substituted therefor:

Upon the application of the party chargeable by such bill within such month any of the Superior Courts of Law or Equity or any Judge thereof, or any Judge of a County Court shall without money being brought into court refer the bill and the demand thereon to be taxed by the proper officer of any of the Courts in the county, in which any of the business charged for in such bill was done, and the Court or Judge making such reference shall restrain the bringing any suit for such demand pending the reference.

14. That the second section of the Act passed in the twenty-eighth year of Her Majesty's reign, chaptered nineteen, be amended by erasing the figure "4" in the fourth line of such section and substituting therefor the figure "9."

Some slight alterations have also been made in Committee of the House, which we shall refer to hereafter.

SELECTIONS.

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It is much to be regretted that whilst proper remedies are available of a preventive, suppressive, and penal character, against crime, the ordinary disease of the body politic, there are no remedies either of a preventive, suppressive, or penal character against war, the highest and most pernicious crime in the commonwealth of nations, unless it be, indeed, its own condign retribution. It is supposed that International Law is able to subordinate the relations of States to the dictates of natural law, and that though nations acknowledge no superiors, they are yet under the same obligation mutually to practice honesty and humanity. But, alas, experience shows that

International Law is not able to effect its own noble mission. That law does indeed afford a standard of high maxims of right and justice, by which the acts of States may be judged, but fails altogether in the means of securing adherence thereto, and many are the acts which that law reprobates, that continue to be committed with the utmost impunity. Can nothing be done to place the public law of the civilised world on a firmer footing than it stands at present? Is there no mode for supplying the serious shortcomings of International Law?

The root of weakness in International Law is, that it is not a law. A law, in its special restricted sense, is a command or precept, emanating from some superior authority, and constituting a rule of action which an inferior is obliged to obey. Not so with International Law. That is only a body of principles or opinions enforced, not by physical but by moral sanctions. Nor is there much certainty or authority in the sources of such principles. Natural law, divine law, the reason of the thing, the customs of nations, the express agreements of States, the judgments of Prize Courts, the dicta of learned writers have each and all elements of weakness in them. Natural law is a sentiment rather than a principle. Divine law is unheeded by some, denied by others. The reason of the thing is often not very transparent in particular cases. The judgments of Prize Courts frequently reflect the opinions of the State under whom they are instituted. Treaties are easily disregarded or broken, and the statements of writers on the law of nations are often uncertain and conflicting.

Setting aside, however, these inherent defects, generally, we may say, International Law is composed of two elements, the natural and the conventional. The natural element is common to all nations. Like the *jus gentium* of the Romans, it embraces all those principles of morals which are implanted by the Author of Nature in the heart and mind of every one, of whatever clime or race, and which ought to regulate the acts of every individual of every State in their mutual relations. The duty of being faithful to one's engagements, or of acting in good faith, or of respecting the rights and property of others, are necessarily alike in every country, and are as binding on the State in its collective capacity as a moral person as on an individual. The conventional element of International Law is that which results from the practice of nations, from the judgments of their Prize Courts, and from express agreements or treaties. There are leading cases in the law of nations as in municipal law. The declarations made by ministers or ambassadors, the diplomatic correspondence, the conduct of States, constitute so many evidences of the positive obligations of States. But those two elements, the natural and the conventional, are often intermixed and often separate. There may indeed be a natural

* Recently read at the Social Science Congress.