

Canada Law Journal.

VOL. XXXIV.

MAY 1, 1898.

NO. 9.

The attitude of the American Congress prior to the recent outbreak of hostilities seems to have been precisely the reverse of that which the framers of the constitution expected it to adopt. The danger apprehended by those farsighted politicians and jurists was that, if the power of declaring war were given to the President, he might involve the nation in a contest against its wishes. They, accordingly, curtailed in this respect the functions usually possessed by the executive department of the Government, and provided that it should rest with the Legislature to say whether the emergency was one which called for the *ultima ratio regum*, their theory being, as Chancellor Kent observes (I Comm. p. 52), that "nothing short of a strong case deeply affecting essential rights, and which could not receive a pacific adjustment, after all reasonable efforts should have been exhausted, would ever prevail upon Congress to declare war." The President and Congress, however, may be said, during the last few weeks, to have exchanged the roles which they were to play, and the world has been treated to the curious spectacle of a Legislature which was intended to act as a drag upon the executive, slighting the temperate counsels of Mr. McKinley and rushing precipitately into a war which a large proportion of the citizens regard as wholly unjustifiable, or at least unnecessary, under the circumstances, and which might possibly have been avoided, and the desired result attained, by the "pacific adjustment" of cool-headed diplomacy. Whether the President in the now famous message, in which, after explaining the situation in Cuba and the different courses which might be pursued, left to Congress the responsibility of deciding between them, discharged his functions precisely in the manner originally contemplated by those who defined them, is an interesting question which we