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INTERNATIONAL ASPECTS OF THE SPANISH-AMERICAN WAR.

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The conflict between the United States and Spain, now being waged to an effective conclusion, may be more important in its incidental than in its direct consequences.

Every great modern war between members of the family of nations is productive of effects in several directions. It may lead to territorial re-adjustments and dispositions, in which others in the society of nations may be disposed to claim a voice. It adds new developments to the science and rules of war. It contributes to the body of precedents which form international law. More lasting and often most important of all, it has reflex effects upon the internal constitution, character and future history of the nations concerned.

The causes of the disturbances in Cuba have been long impending; and the existing rebellion is less substantial, I might say, less respectable, than others which have occurred in Cuban history. It did not originate in towns or thickly settled districts. It had not the principal native Cubans in its ranks. It was not, like the great rebellion which ended in 1878, substantially a rising of the Cuban people of European descent. There is much probability that it was largely recruited from the negro labourers thrown out of work by depression on the sugar estates. Organized under the respectable name of rebels, they were not disappointed in their hope of obtaining support from foreign sympathizers.

Spanish corruption is probably the true cause of the intolerable prolongation of the process of suppressing this never really formidable insurrection. The implication of designed negligence, inspired by corrupt interest on the part of local authorities, in prolonging the war, is unfortunately only too consistent with Spanish

Colonial traditions. The misconduct of the Spanish military authorities ended at length in exciting a real and wide-spread intolerance of Spanish domination throughout Cuba. Then came suspicion and hostility on the part of the authorities, ending in the horrible resort to ruthless deportation, or "concentration," of the inhabitants, and a general devastation of the country, in the name of saving it from the banditti. What may be permissible by laws of war in the case of hostile military operations, is not defensible when exercised on such an immense and disastrous scale, towards the mass of a subject population, which it is the duty of the Government to protect. It was an admission of incompetence in the work of defence: or it was a declaration of hostility towards the whole people of the Island. In either case it was an insufferable breach of the parental duty of a Government. A Government which can only maintain order by ruining and destroying its people has abdicated its position and assumed that of a mere foreign oppressor.

Nevertheless, this situation did not come under any of the rules of international law as a justification for interference. International law has a great respect for the rights of force. Force, however brutally exercised upon lawful subjects, is not interfered with, provided these three conditions are present: (1) That the acts are done by the legally constituted Government in the assertion of its authority. (2) That they are regular military or penal measures for the suppression of insurrection. (3) That the Government is powerful enough to make them effective. The measures of the Spanish Government, even if construed as acts of hostility, directed against the whole Cuban people, were technically permissible, because the Government had the power to make them effective. The Government had in fact by these means, to a great extent, "pacified" the island. It had made a desolation and called it peace.

While the grounds of interference in the affairs of an adjoining state were so strictly limited by international law as not to reach the case of Cuba, the Anglo-Saxon common sense of the United States people called for the application of the same device by which an early English Parliament delivered English jurisprudence from the narrow fetters of the common lawyers. If no precisely similar writ was to be found, let one be made to suit the case.

The American revolution was an economic protest more than a political revolt. Had the assertion of British Parliamentary

dominion not taken the form of tributes and monopolies, for the benefit of traders and ship-masters across the sea, the abstract principle, unconstitutional as it was, would not, at all events until a later date, have encountered such fierce and universal resistance. The evils wrought by economic wrongs extend beyond the borders of the state where they are inflicted. The depression of local industry and enterprise, through the discouragements imposed by arbitrary misgovernment, the consequent locking up of fertile lands from free development, the burdening of production with unreasonable tributes and exactions, all tend to make the products of the country scarcer and more costly to all the consuming world. To the consuming world, therefore, there is a general economic injury from local misgovernment. If it is not a wrong recognized in international jurisprudence, it is one felt by the people of all states, and of which the people are likely to take more notice in the future than their Governments have done in the past. In the vindication of economic rights against every form of oppression, the people will be more and more inclined to make common cause, bearing in mind that in fact they eventually bear one anothers' burdens.

It is possible that the retreat of the Spanish army of officials, following the Spanish military forces, which have till now protected it, might lead to the substitution of local officials equally venal and corrupt. Nevertheless, there is a substantial difference between the peculation of a succession of natives and tributary extortion through a succession of foreigners. The difference is not merely political but economic. When the plunderers are natives, the plunder, though circulating through foul channels, is not wholly lost to the country. The local accumulations are locally invested or re-distributed. But when the surplus wealth of a country is gathered by members of a favoured official class, who ultimately retire with their accumulations to their own country, miserable indeed is the state of the subject province. The springs of enterprise are sapped, the possibility of prosperity is withered in the bud. It is absentee landlordism on the hugest scale.

Struggling to keep within the lines of international precedent, the President of the United States was hindered from basing interference by the Government of the United States upon the grounds that really influenced the American people, and which were at least not less valid than the diplomatic pretexts. Absentee landlordism, resulting from private contract, may be modified, but can-

not be abolished by national interference, unless by purchase. But absentee landlordism, impressed upon a European colony, by force of foreign arms, for the benefit of a distant foreign nation, is not law but violence. When it is maintained upon this continent, against the protest of the sufferers, it is a kind of oppression of an American nation, which falls within the spirit of the Monroe doctrine, although the letter may be limited to nations which have effectually declared their independence. A remedial movement, on the part of the United States, was already progressing in the form of irresistible moral pressure. Concession after concession had been obtained. Successive advances were made towards local autonomy and freedom for the Cuban people. The bounds of moral pressure might never have been passed, had not the destruction of the Maine occurred in the harbor of Havana.

Senor Du Bosc, in his recent lucid and able statement of the Spanish case, at Toronto, enumerated with some triumph the concessions made by Spain as covering every demand of the Cuban people, or of their sympathizers in the United States. In the same breath he complained of the United States Government having not only recently, but for a quarter of a century past, permitted incessant encouragement to be given to Cuban insurrections. Is there no connection between the two facts ? Was not the granting of the approved constitution expedited, if not wholly procured, by the pressure of the recurring insurrections ? If the United States in the last century would have been unable to successfully assert the same principles without the help of France and Spain, could the Cubans have hoped to effectually protest against their grievances without secret American assistance, backed by the impending sympathy of the United States as a nation ? If we approve of the end, can we altogether complain of the means which were perhaps indispensable to the bringing of it about ?

At length, however, the Spanish Parliament had conceded to the Cuban people an autonomic constitution, whose first Parliament or Congress was opened, amid the echo of the bombardment of Manila, and in the presence of the lowering circle of warships surrounding Havana. It is declared on behalf of Spain that this constitution is modelled on that of Canada. If the claim were correct, it would put the United States wholly in the wrong, because such a concession would have amounted to nothing less than a grant of independence. It is worth while to examine the justice of this representation.

A glance at the Canadian Confederation Act will reveal a wide interval that separates the two constitutions. The preamble of the British North American Act declares that the Provinces of Canada, Nova Scotia and New Brunswick "have expressed their desire to be federally united into one Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a constitution similar in principle to that of the United Kingdom." "The Executive Government and authority of and over Canada is hereby declared to continue and be vested in the Queen. There shall be a Council to aid and advise in the government of Canada, to be styled the Queen's Privy Council for Canada; and the persons who are to be members of that Council shall be, from time to time, chosen and summoned by the Governor-General, and sworn in as Privy Councillors, and members thereof may be, from time to time, removed by the Governor-General. The provisions of this Act, referring to the Governor-General-in-Council, shall be construed as referring to the Governor-General acting by and with the advice of the Queen's Privy Council for Canada. There shall be one Parliament for Canada, consisting of the Queen, an Upper House, styled the Senate, and the House of Commons. The privileges, immunities, and powers to be held, enjoyed and exercised by the Senate and by the House of Commons and by the members thereof, respectively, shall be such as are from time to time defined by Act of Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities and powers, shall not confer any privileges, immunities or powers exceeding those at the passing of such Act, held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the members thereof."

The golden line, which illuminates the whole of the statutory constitution, is the sentence in the preamble which incorporates the principles of the British Constitution. It causes us to read into the statutes the unwritten line which that constitution inscribes under the words Privy Council; namely, the essential understanding that the Queen's Privy Council, though in name chosen by the Queen, shall be a body really chosen by the people, the constituents of Parliament.

Our provincial constitutions, even before the Federal Union, had always implicitly, and in practice, been interpreted by this principle. Its incorpor tion has now been set down in express terms, solemnly recognized and registered by the British Parlia-

ment. The Queen, as a constituent of our Parliament and the head of our Executive, derives her title by her succession as Queen of Great Britain. But in enacting and administering the laws of Canada, she acts, not as Queen of England, but as Queen of Canada. It has been proposed to amend the royal title to conform to modern facts, and the amendment probably only awaits a convenient moment. The oath to be taken by Canadian Privy Councillors has already, long ago, been so amended. A member of the Canadian Executive Council simply swears that he will be faithful and bear true allegiance to her Majesty, Queen Victoria. The Cubans, therefore, under a like constitution, would have been a free and independent people, having the Queen of Spain as the head of their Government, but being in no wise subject to the authority or Government of Spain.

The following abstract of the terms of the new Cuban Constitution, formulated in November, 1897, was communicated by the London Times correspondent at Madrid:

1. The Cubans to enjoy all rights accorded by the Spanish Constitution without limit of any kind.

2. Identity of political rights for Spaniards and Cubans without distinction of race or colour.

3. The creation of a Cuban Chamber; all the members to be appointed by a popular election; with a provision for a subsequent establishment of a Senate.

4. The Cuban Chamber to be empowered to vote on the estimates of expenditure, to make laws relating to public services, to fix custom tariffs, and to decide on the responsibility of the members of the Executive power.

5. The Mother Country to assume the exclusive management of international, military and naval matters, together with the competent jurisdiction and organization of tribunals.

6. To also undertake the direction of political and civil laws of a national character, and the control of expenditure under this head in Cuba and Puerto Rico.

7. The Executive power to be invested in the Governor-General, with delegates whom he will have the right of appointing, and who will be responsible to the Cuban Chamber.

The wording of the sixth clause, excluding "national legislation" from the local jurisdiction, at once denies to Cuba that national status which is given to Canada. The clause making the Executive Council appointees of the Governor-General, but respon-

sible to the Cuban Parliament, lacks the benefit of the interpretative clause in the Canadian Act which imports the principles of the British Constitution. These principles are already negatived in the case of Cuba by the express exclusion of national powers under the sixth clause.

The reservation of "national" legislation to the Spanish Parliament by the sixth clause, obviously includes at least the whole field of criminal law, and probably much more. How much, would presumably be determined in the first instance by the Cuban Courts of Law; that is to say, by courts constituted and judges appointed by the Spanish Government, under the fifth clause. Their decrees will be executed in the presence of the Spanish army, the control and payment of which is also withheld from the Cuban Legislature.

With the one exception of custom tariffs, the status of Cuba corresponds rather to the limited powers of one of the provinces of the Dominion, than to the plenary national status of Federated Canada as a whole. The legislative, administrative, and fiscal authorities reserved to Spain are much what the arbitrary Emperors of Rome reserved to themselves, in their division of powers and revenues with the Roman Senate.

Senor Du Bosc somewhat triumphantly claimed that the Cuban status was more advanced than that of Canada, because the Cubans, in addition to their local constitution, were given thirty representatives in the Spanish Parliament. If there is one thing which well instructed Imperialists do not desire, it is the substitution of representation in the Home Parliament for their own national Parliaments. Such representation would be utterly inconsistent with the only logical scheme of a Federal Empire. For matters that require conference and co-operation, the Privy Councils of the different colonies, directly responsible to their own people and sitting amidst them, are their most effectual representatives. For purposes that concern them they really form, together with the Queen's Home Cabinet, the great Council of the Empire. Senor Du Bosc himself illustrated the illusory character of the Spanish system, when he stated that the thirty representatives of Cuba in the Cortes voted against the grant of Cuban autonomy. Such suspicious unanimity probably indicates by whom the delegates were really chosen, and of whom they were representatives.

The United States were justified in treating the autonomous constitution purported to be granted to Cuba as being, if not

purely illusory, at all events far short of a grant even of real local independence. It certainly falls short of fulfilling the description of being a reproduction of the constitution and status of Canada. Still the new constitution contained the seeds of better things. It would have given the Cuban people (if they had proved worthy of their opportunities), an excellent standing-ground for working towards larger developments.

The bona fides of an autonomic constitution, however, can never be fairly tested in the presence of an overawing foreign army. The law of England enacted that garrisons should be withdrawn during an election. It was not illogical or unreasonable that the United States Congress should demand that Spain should make good her pretensions by withdrawing her army, so that the native Cubans might be able to put their new constitution to a free test. But it seemed to be also required, by the same logic, that the demand should be accompanied by a bona fide undertaking on the part of the United States to restrain their own people from interference, equally prejudicial to the experiment.

But at this moment, as if an extraneous demoniac hand had intervened, occurred the overwhelming disaster of the Maine. In the presence of a tragedy, men are not in the mood for business methods. The primitive passions of humanity were appealed to and thenceforth inevitably governed the action. The conviction of foul play was but disputably founded on the facts in evidence. But the prima facie bearing of the facts supported the conviction. At all events it took irresistible possession of the minds of the American people. Assuming that conviction, there would have been something ignoble in a nation accepting money damages as compensation for such a villainy perpetrated upon its defenceless sailors. It was a more chivalrous determination that nation should answer to nation; that the offender's flag should be torn from the spot where such a crime had been permitted under its protection; that the scene of the tragedy should be made a deodand to the Manes of the victims.

The mass of the American people cannot be blamed for following the unanimous judgment of their experts, even if the judgment was in fact not well founded; still less can they be censured for insisting on the only adequate and dignified remedy. The people obeyed their hearts and are blameless. But it is the duty of Governments to control the heart by the head; it is their proper office to make passion conform to justice. Crime calls for punish-

ment; but the hasty imputation of crime is equally a wrong. Spain, in the presence of an accusation, which would condemn her to everlasting dishonour, was entitled to a fair trial. Her plea for an international determination ought not to have been slighted. It ought even yet to be conceded, notwithstanding the war, and whatever may be its event. Upon the facts proved, expert opinion has arrived at its conclusions, by deductions, which are nothing more than conjecture. Expert opinion is not even unanimous in its conjectures. Experiment, under scientific direction, is the only final test; and experiment may not only relieve Spain of her supposed guilt, but may yet clear up the mystery in a manner beneficial to future constructors of warships and to the handling of the formidable modern explosives.

"If the Spanish Government," wrote the Madrid correspondent of the London Times, "as early as October last, had detected the firm resolve of the President to intervene, and was anxious to avoid war, why did it not accept the tender of good offices, made in such friendly terms ? The question occurred to me at the time, and I ventured to enquire whether a satisfactory solution might not be found, by accepting, with certain restrictions and reserves, the good offices tendered—whether at least it might not be worth while to ascertain what kind of a solution the President hinted at, when he described it as 'honourable alike to Spain and the Cuban people.' His Excellency kindly explained to me that, however reasonable my suggestion might appear to a foreigner imperfectly acquainted with the chivalrous character of the Spanish people, it was practically impossible to act upon it. He was a Spaniard and could not admit foreign intervention in internal affairs. Cuba was simply a Spanish province beyond the seas, and the Cubans were Spanish subjects, like the inhabitants of Aragon or Castile. If any Spanish Minister could be found weak enough to admit such intervention, he would raise throughout the country a storm of popular indignation, which would not confine itself to the overthrow of the cabinet which had permitted such national humiliation."

We are reminded of Dr. Oliver Wendell Holmes' famous classification of the six parties who are present in a dialogue apparently between two individuals. Behind John's images of himself, and of Peter, and Peter's images of himself and of John, there are the real John and the real Peter. Perhaps in this case the real Peter and John, standing behind the faces and voices of

international diplomacy, were the irreconcilable and unchangeable determinations of the Spanish and American peoples.

To the President, Mr. McKinley, credit has been generally given, both in the United States and abroad, for having endeavoured to observe faithfully the high and terrible responsibilities of his office. I fully believe that he had every desire to avoid hostilities; or at least to wait an obviously just occasion on his country's behalf, and a favourable moment, after its preparations were complete.

It is, in the opinion of many, the misfortune of the United States Constitution that, while it exalts the Presidency into the supreme aim of ambitious chivalry, it does not endow the successful occupant with the necessary full powers to enable him to creditably discharge his responsibilities to the nation. Alike in respect to the internal policy to which he commits himself in his candidature, and in the conduct of foreign relations, he is at the mercy of hostile factions and prospective rivals in the two Houses, without whose concurrence he can do scarcely any important act.

The moderating disposition which many Presidents have exhibited in times of popular excitement, emphasizes a very great political fact; that concentration of responsibility, by the individualization of authority, is the best hope of good government under our representative systems. We have often seen the popular choice fall upon a mere party leader, not previously distinguished from his fellows, either by moderation of views or by any promise of statesmanlike insight. Yet the same man, promoted to a position where the decision of great issues is cast upon his single head, is seen to rise unexpectedly to the duties of the occasion. The mantle of kings seems to fall upon the individual who is called upon to exercise the office of kings. His vision is not always bounded by the November elections or the next Presidential campaign. His conscience takes the care of a nation in its keeping. That great ever-living Corporation becomes a guiding presence at his side; and he is able to hear the calm applause of history and the remote gratitude of future generations, above the roar of mobs, and the tumultuous passions and interests of the day.

The measure of individual power entrusted to the President is daily doing honour to the Fathers of the United States Constitution. That his powers were not made more explicit and com-

plete, unembarrassed by congressional interference, is daily coming to be recognized as a public misfortune. The dexterity of Presidents is repeatedly called upon to overcome the deficiencies of the constitution. By a master stroke of state-craft a former President, Mr. Cleveland, at an even more critical moment, obtained the necessary command of the situation. The Venezuela excitement was rapidly approaching a dangerous height. It was important to tide over the danger of the hour by means of a dilatory diplomatic commission. It was equally necessary, to make the expedient effective, that the President should acquire sole power of determining the personnel of the commission, free from the confirmatory control which the constitution vests in the Senate. To attain this end Mr. Cleveland paralyzed Congress by a message, so unexpected in its fierceness and boldness, that the Senate, in the surprise of the moment and under compulsion of popular enthusiasm, was obliged to surrender its control, and confer on the President the untrammelled power he demanded. He seized the opportunity to carry out his plan by selecting a commission of the learned, diplomatic and judicial quality he had intended, in place of one composed of furious politicians. The calculated deliberation of this commission carried the nation past the danger point, and delivered civilization from an imminent peril. In issuing his startling and apparently violent proclamation, the President was simply borrowing the device of the North American Indian, when threatened by a prairie fire. He set fire to leeward, and made a place of safety, in advance of the approaching conflagration. I hope that history will render belated justice to Mr. Cleveland, and that future generations of English-speaking nations will acknowledge their debt to his statecraft and courage. To his sole premeditated act it was owing that the war guns of the United States did not wake from their silence three years earlier, to spend their thunders in a more atrocious and unnatural war, against a thousand-fold more formidable foe.

Mr. McKinley appears to have sought to maintain the higher traditions of Presidential statemanship. It is evident that the President recognized, as a statesman, that, in a conflict with a European nation, other European nations might at some time or other claim a voice. He, therefore, with prudent foresight, desired to fortify the action of his country by keeping as closely as possible to European precedent. Such precedent was to be found in the action of the concert of Europe in the case of Crete. That action

no doubt was of a very extraordinary kind. It would have puzzled a jurist to define or defend it, upon any hitherto known principles of international law. The great Powers intervened in Crete without invitation, either from the acknowledged sovereign—the Sultan of Turkey—or from any constituted insurgent government, or even from any party among the inhabitants. Without declaring war, the Powers committed nearly all the overt acts of war. While acknowledging the Porte's sovereignty, they practically annihilated it. They surrounded the coasts of his subjects' territory with their fleets; they forbade admission to his own fleets and armies. They landed their own troops upon his soil, and marched them at their pleasure through the Island. They interposed their own military cordon as a protection to the insurgents. They established police, and, when necessary, fired upon the subjects of the acknowledged sovereign. The Powers undertook to prescribe to the Sultan the form of Government which he should establish in his territory; and but for their own disagreements they would have made the necessary appointments to set it in motion. All these proceedings were covered by the magic term—Pacification.

The treatment of Crete was the model which Mr. McKinley proposed to follow in the case of Cuba. The circumstances in Cuba were, at least by allegation, substantially parallel to those which had existed in Crete. The United States, as an intervening power, was relatively in a position equivalent to that of the great Powers operating in the Mediterranean. The only other great power in America was the Empire, of which Canada is the integral representative on this continent. Our Empire was tacitly consenting to action by the United States, without desiring to participate in it. Mr. McKinley aimed at making his imitation of the action of the European Powers as close as possible. The purpose of intervention was to be not conquest but pacification. Mr. McKinley was as scrupulous as the Powers in leaving the nominal foreign sovereignty untouched. No independent local Government of Cuba was treated with or to be acknowledged; but local liberty was understood to be pressed for, and the acknowledged sovereign was required to leave the inhabitants to work out the autonomy Spain herself instituted, free from the shadow of a Spanish army. The work of police, if found necessary, was no doubt to be undertaken by the forces of the United States. Like the Powers, Mr. McKinley desired to refrain from any declaration

of war, leaving that act to be taken by Spain, if she dissented from these arrangements.

While Mr. McKinley desired to put an end to every tangible grievance and to secure substantial liberty for the Cuban people, the aspiring leaders at the head of the rival factions in Congress had quite different aims. They put themselves at the head of the popular cry for the formal independence of Cuba. At the last the President appears to have suffered his hand to be forced. There is an unfortunate resemblance to the methods which brought about the miserable and fruitless war of 1812. Peremptory resolutions, inviting war, passed Congress, were confirmed by the President, and became the national ultimatum.

The President's policy was perhaps at fault in not more thoroughly taking the cue from President Cleveland's eminently successful method. He might have definitely pressed the Maine case as a conditional casus belli in his diplomatic communications with Spain. He would thereby have given expression to the real popular feeling animating the irresistible cry for war. By not doing so, the President played into the hands of the party whose object was war at all events. So distinct an issue was the last thing desired. Arbitration was sure to be tendered and the United States could not with decency repudiate the application of their own favourite principle, if it appeared that a substantial issue of fact as well as of international responsibility was in question. But it was clear to the war party that if the Maine incident was put forward, as the special issue, and met by a tender of arbitration, the United States Government would then be foreclosed from afterwards falling back upon any former grievance as a reasonable pretext of war. A definite prior grievance it would have been difficult to find. The large measure of autonomy already conceded to the Cubans promised that more would be obtained in time under continued pressure. The armistice which the United States required had been offered to the insurgents. The evil and suffering under the system of reconcentration were being alleviated. Congress carefully evaded making the destruction of the Maine its casus belli. The war has been commenced on other grounds and on these grounds must now proceed to its conclusion.

Mr. McKinley has been over-ruled as to the time of action, and, to some extent, as to the form of the justificatory declaration of the motive of the war. The position he desired to take was confused by the interference of Congress. Nevertheless the lines

of the original Presidential policy are still discernible under the Congressional palimpsest; and they may yet govern the future interpretation of the position. The struggle between the President and Congress resulted in a compromise, which has made of the Congressional ultimatum, conveyed by the President to Spain, as extraordinary a document as is to be found in Parliamentary or diplomatic records. Beginning with a recital of grievances, some of them no longer operative, and many of them based on disputed allegations, there follows, not a request for remedy, but a declaration of the incapacity of the responsible power, and a demand that it should cease from attempting the remedy, and resign that task to the United States. Waiving doubts as to the facts, the proceedings so far, though undiplomatic in form, were hardly more so than the action of the Powers towards Turkey in the case of Crete. So far, the declaration departs little from the President's policy and the precedent he was seeking to imitate. The same policy is further followed by a paragraph disclaiming in advance the intention of conquest. For the purpose only of restoring order, it is declared, the forces of the United States are to be employed; and when that object is accomplished they are to be withdrawn, and the Government of the island left to its own people. Thus due place is given to the magic word—Pacification.

The chief battle between the President and the Houses was over a clause which the Senate desired to insert, recognizing the insurgent Government of Cuba, and declaring the Cuban people to be free and independent. This was the principal subject of the final compromise. It resulted in eliding the words which recognized the independent Government, but left standing the remainder of the clause, asserting that the people of Cuba "are and of right ought to be free and independent." The premises of the syllogism remained after the conclusion had been struck out.

As applied to the existing conditions in Cuba, the statement that the people of Cuba are in fact free and independent, unaccompanied by recognition of any existing independent Government, is meaningless for any diplomatic or legal purpose. Under international law, and of practical necessity, the recognition of de facto Governments is as necessary to the maintenance of the society of nations as the theory of vested ownership of all visible private possessions is to the national law property.

The clause as it stands is copied from a paragraph in the declaration of independence of the United States. The famous

document is not much honoured by such an inappropriate plagiarism. The formula that the people "are and of right ought to be free and independent," contains two distinct statements. In both model and copy, an assertion of fact is coupled with an assertion of right. The virtue of the assertion of fact must depend upon its truth. Parliaments and Congresses are omnipotent within their own domain; but they have not the power to make that a fact which is contrary to fact; nor to impose a recognition of their assertions upon the outer world, at least in respect to matters happening beyond the national boundaries. The assertion of right has no validity whatever, because it is made by a stranger, not by those for whom the right is claimed.

The whole statement lacks the dignity and force which the same language had when it proceeded from the pen of the signers of the Declaration of Independence. The parties in that case were the regularly constituted de facto representatives of the Colonies to whom their declaration related. They were sufficiently de jure representatives to be authorized to fling down that gage on behalf of their constituents. Their constituents, the people of the United Colonies, had the right to join in such a declaration, because they were prepared to ratify it by their own actually organized and efficient force. Their success ripened a de jure claim into a lawful fact.

On the termination of the war, the United States Government will be called upon to face a number of perplexing questions, in respect to which the terms of this declaration may involve important consequences.

Although coupled with this clause was another which called on Spain to withdraw her Government and authority from the Island of Cuba, yet the wording of the whole ultimatum, as finally settled, is susceptible of an interpretation which may leave the victory with the President. The nation may not find itself concluded from carrying out the President's policy in the final arrangements respecting the status of Cuba. This suggestion will be discussed in the part of this paper dealing with the probable result of the war.

The nation was hurried into war, greatly to its disadvantage from a military point of view, and scarcely less to its disadvantage in a moral sense. Foreign observers are left to doubt whether war with Spain was necessary. If it was unnecessary, unless war be regarded as an end in itself, it was a premature and prejudicial

avenue to the desired results. In the meantime onlookers are in no better position to judge this subject conclusively than the people whom it principally concerns.

Peace and civilization are the boasted ensigns of the English-speaking family of nations. If war we must, let not only the cause be just, but the manner of warfare honourable. The example of amelioration in the laws and practice of war may compensate to some extent for the breach which war makes in the edifice of civilization.

The war, only formally announced by a resolution of the United States Congress, after the United States fleet had made a number of captures of unsuspecting merchantmen, rather too nearly approached the Irish rule of commencing hostilities with "A word and a blow—the blow first." Writers on international law have sought to prescribe much more deliberate formalities as necessary to the making of a lawful war. Learned disquisitions on the denunciatio belli to the enemy and the declaratio belli to the neutral nations were founded on the dignified if somewhat cumbrous procedure of the ancient Roman Republic and its successor the Roman Empire. Much of this theory has little to do with modern practice. Dignity and courtesy and disdain of mean surprise are desirable rules to maintain even in war. But when nations do not choose to observe such rules, nice customs perforce "courtesy to great kings."

An enlightened patriotism must surely blush at the shout of exultation and acclamation sent up by the press of a great Christian nation over each of those pitiful captures. Sentiments of humanity revolt against the sordid calculation of gains, which mean the ruin of a few enterprising merchants—protestants, perhaps, against the war—the interruption of honest industry, and the beggary of unemployed seamen.

Americans could hardly have read with pride of the surprise, by American cruisers and battleships, of innocent merchantmen under the Spanish flag, actually in advance of a formal declaration of war, and certainly without the favourable period of warning which modern civilized practice sanctions. Fortunately for American credit, these premature seizures seem to have been practically disavowed by the terms of the President's proclamation. But the whole scope of the proclamation is an authority to United States Naval Commanders to prey upon Spanish merchant ships and their

contents. In other words it is an instruction to continue the capture of private property at sea, in a war which may close the record of the nineteenth century.

No two nations in the world are likely in the future to have so vast an interest in establishing the immunity of private commerce as the British Empire and the United States. When the channels between the Great Lakes and the sea are deepened, as they infallibly must be, the United States will possess the best facilities in the world for the building of steel shipping. Before many decades pass a vast share of the trade of the Clyde and the Tyne may have been shifted to the shores of Lake Erie. A ship-building nation will soon be a ship-owning nation. In some future war the United States may bitterly regret that they did not in good time lay an effectual foundation, by their own example, for protesting against the lawfulness of national piracy.

The United States, whose fleet was in such haste to begin the work of maritime spoilation, formerly signalized themselves by proposing the neutralization of private property at sea. In 1856 they stood alone as the advocates of the total abolition of the right of capture.

International law grows by the practice of nations more surely than by paper rules and formal conventions. The present war was, and may yet be, an opportunity for the United States to make, by its own conduct, a first precedent in striking the right of capture from the list of the permitted iniquities of warfare.

The standard of what is honourable and lawful in the defence or enforcement of national rights by war has fortunately long been an advancing one. Nations have left to foreign tribes many methods which were permissible to the great nations of antiquity. We seek on the field to win battles rather than to destroy men. We have long ceased to sell vanquished nations into slavery, or to put the entire population of captured cities to the sword. We have gone, by common consent, much farther than this. It would no doubt surprise Wallenstein to learn that we no longer permit the sacking of an enemy's town. As far as possible private property is unharmed by an invading army. Subsisting an army upon the plunder of farmers and townsmen is no longer avowed as an ordinary maxim of warfare.

It is only at sea that the ancient principle that war is principally an opportunity for legalized plunder still obtains. It is a maxim which the civilization of our country has already shaken

upon its throne. The principles of the Paris Convention in 1856 were a great advance on the universal practice of the past. The United States, Spain and the Spanish Republics declined at that time to accept those terms. It is so far satisfactory that both Spain and the United States, though not among the signatories to that convention, have now definitely adhered to most of the rules. Neutral ships protect enemy's goods, and neutral goods do not share the fate of the enemy's ships in which they are found. Both combatants have so far regarded the Declaration of the Paris Convention against privateering. Their hesitation is a deference to the conscience of the nations, and the augury is favourable for confirmation, through their action, of the righteous prohibition of one of the most indefensible wrongs and brutalities of war. It is understood that influence to this end was used by the British Government both upon the United States and Spain. We may be proud that the first fruit of the rapprochement of English-speaking opinion has been to lead two governments to stay their hands from perpetuating the barbarous expedient of legitimatized piracy.

It is not surprising that the United States Government should hesitate to introduce this retrograde practice into the present war. It is the glory of the English-speaking race, since the days of John Howard, that it has led the way by national and voluntary effort in the work of redeeming and diminishing the criminal classes. It would ill become the land of prison reform to authorize the education of a race of corsairs. Even in the bitterness of the war of 1812 the issue of letters of marque was authorized against the protest of a numerous minority of right-feeling people in the nation. President McKinley has not desired to leave recorded against his country a more barbarous disposition, at the close of the nineteenth century, than prevailed in its first quarter.

Though a distinct gain has been made towards the humanization of war, it ought not, for the honour of our race, to be the only one. So far, the United States have merely brought their action up to the standard set by the great European Powers in 1856. Nearly thirty years have elapsed since two great nations have been at war. Has a whole generation of civilization no advance to record in the regulation of hostilities? The tendency of international law aims at limiting the scope both in time and place of the destructive effects of a state of hostilities. On the field we seek to disable men, not to kill them. We occupy territories but do not devastate them. Modern warfare tends to respect

the property as well as the lives of non-combatants on land, and the logic surely applies with not less force to private property afloat.

Not only humanity but economics claim a voice in the matter. A war of destruction is a war against mankind; because a loss of real wealth is a loss to all the world. The wealth fund and the labour market of the world are really universal. When commerce is destroyed and enterprise plunged into ruin, sooner or later the wave of sinking will reach the farthest shores. The damage from public as from private plunder is out of proportion to the profits. There is loss in the disposition both of stolen and of captured goods. The thief is obliged to realize his booty at a great discount. The cargoes of captured ships are diverted from markets where they are in demand, to be sacrificed at ports where they are not wanted. In the complexities of modern commerce the loss by no means necessarily falls upon the enemy. The insurers may be citizens of a friendly nation; they may even be subjects of the capturing power. War risks make high freight rates; and the added cost must be taken out of the living of the people.

What gains may be reaped will be reaped by a few; whatever loss is in fact occasioned must infallibly fall upon the many. Well might the people of these nations uplift their allied voices in protest against the continuation in this war of the most wasteful of its practices. It is only the continued silent acquiescence of civilized nations that veils the hideousness of the law of capture, and protects it from irresistible condemnation.

The real root of the practice is to be found in the fact that wars were originally simply plundering expeditions. When the advance of civilization, and the settlement of tribes into nations, led to the foundation of a science of international law, the early writers were compelled to invent an artificial basis for this survival of the simple usages of barbarism. This is how they endeavoured to accomplish it:

"When the sovereign or ruler of the state," wrote Vattel, Bk. III., Ch. 5., "declares war against another sovereign, it is understood that the whole nation declares war against another nation; for the sovereign represents the nation, and acts in the name of the whole society, and it is only in a body, and in her national character, that one nation has to do with another. Hence these two nations are enemies, and all the subjects of the one are enemies to all the subjects of the other. When once we have precisely

determined who our enemies are," he continues, "it is easy to know what are the things belonging to the enemy (res hostiles). We have shown that not only the sovereign with whom we are at war is an enemy, but also his whole nation, even the very women and children. Everything, therefore, which belongs to that nation—to the state, to the sovereign, to the subjects, of whatever age or sex—everything of that kind, I say, falls under the description of things belonging to the enemy."

How does this amiable doctrine stand in the light of later civilization? Are we now prepared to admit that because our respective Governments are at war it becomes our duty as citizens to set our hand against every man in the opposite nation? Are we to consider not only every man but every woman and child as our personal enemy?

The argument for privateering adduced by the Government of the United States, in 1812, in answer to the protest of many of their people, was very frankly founded on this doctrine. It was pleaded that as the purpose of war is to damage and injure the enemy until he submits to the wishes of the belligerent nation, therefore it was as lawful and righteous to damage him by spoilation of the private property of his subjects, as by demolishing his forts and attacking his armies. The argument was used to justify privateering. If disaffirmed, it makes the same ravages indefensible, whether inflicted by privateersmen or by men-of-war. The argument answered then. That it will not answer as well now is proved by the condemnation of privateering, agreed to by a majority of European nations in 1856, and now confirmed, by the adhesion to that principle of two of the group of nations which formerly dissented from the Paris declaration.

The true trend of modern thought was thus stated by Professor Robertson, as early as 1881: "That the non-combatant portions of the two communities should remain as though they were in a state of peace, is the principle towards which international law appears to be tending. The movement against privateering is an illustration of this tendency. In war carried on by land, non-combatants are as far as possible kept out of the sphere of operations—only persons under public military command being regarded as combatants. In naval warfare it has long been recognized as a valid mode of conducting hostilities to grant "letters of marque" to private vessels, owned, manned and officered by private gangs of free-booters. The Treaty of Paris of 1856 contains

the famous declaration 'that privateering is and remains abolished,' and the adhesion of the United States to this principle would go far to make the practice illegal by the law of nations. Hitherto they have declined, 'preferring the more comprehensive policy of prohibiting the seizure of private property of all kinds by ships of war. This point conceded, the United States would assent to the abolition of privateering.'"

It is strange that, now that the opportunity is all their own, the United States no longer show a disposition to abolish capture by ships of war. Waiving their former condition they have simply fallen in with the prohibition of privateering. The presumable objection to commissioning privateers is that the privateer frankly goes into the business on account of its profits. The distinction is shadowy. Both privateers and ships of war plunder under commission; both are controlled in their plundering by authoritative limitations and regulations, both of international and municipal law. The distinction between the two methods all but vanishes in the presence of the custom of dividing the value of prizes, taken by warships, among the officers and crew, under the name of prize money. The profits from seizures are actually being held out at the present moment, in the United States Press, as an inducement to enlistment in the navy. Calculations are publicly made of the fortunes already reaped by the Commanders. Is not the practice calculated to degrade the regular naval service to the standards of privateering? How far are the new men enlisted in such a spirit really better than privateersmen?

The invention of "Volunteer Fleets" by the very signatories of the Treaty of Paris, establishes that as long as capture is permitted privateering will not really be abolished.

Thus writes a Rear-Admiral of the French Navy in the Gaulois: "We shall patiently bide our time, and it will certainly come. Meanwhile we shall organize an implacable system of privateering against the trade of our eventual enemy. I know not what diplomatists may think of the Convention of 1856, but as for us sailors, let the English be assured beforehand that we shall carry on privateering against them, and let them take the ruin of their maritime trade into their forecasts."*

To such a point has the leaven of capture corrupted the service of a European nation. This naval officer of high rank betrays the spirit of the privateersman. He openly repudiates the honour

* Rear-Admiral Dupont, London Times, May 19th, 1898.

of his country and his duty to submit to its engagements. The nation which claims to lead European civilization, and which invites the world to celebrate the close of the nineteenth century at its capital, declares by this spokesman that it is ready to repeat the equivalent at sea of that atrocity of the Middle Ages, the devastation of the Palatinate. Will it allege as its justification the repudiation by the United States, in their own case, of their former humanitarian stand on the morality of capture?

From some acquaintance with its personnel and its methods I entertain a profound respect for the American Naval Service. Its achievements in the war of 1812, on lake and sea, let us be proud to own, showed that our kindred are also no unworthy descendants of the Sea Kings. While it was debarred by peace from feats of arms, it was winning better victories in the field of science. Dr. Kane led a creditable expedition in the track of Sir John Franklin, and in that icy prison supported the hearts of his crew through the gloom of two Arctic winters. Commander Wilkes revealed the outlines of the Antarctic Continent. Lieutenant Maury laid down the course and boundaries of that mighty river in the ocean, the Gulf Stream. Captain Mahan's monumental work, on the Sea power in History, is one of the great efforts of professional and historical learning. In the work of the United States Fish Commission, in the survey of the lakes, in the lighthouse service, and far from least, in the wonderful system of the Hydrographic office, those able officers have rendered most distinguished aid to Science, Commerce and Humanity.

Once more set upon its mission of war, in the action of Manila and subsequently, the service has well maintained its record. Although the superiority in ships and guns made the result of any encounter almost a certainty, still boldness and strategy were necessary to obtain positions to make these advantages tell; and these qualities have been displayed in a high degree. The more does one sympathize with the mortification of the Commanders of that honourable service under the ridiculous press glorification of wretched exploits in the chase of helpless merchantmen. It is not a business to which brave men ought to be ordered. A noble professional standard ought not to be lowered by setting the navy upon the hunt for prize money. Gallant officers and crews ought not to be reduced to the position of bargaining lawyers, who are expected to make their costs out of the opposite party.

Even if the barbarous notion of the objects and means of war,

upon which the Government of 1812 took its stand, is to be considered maintainable to-day, regard must be had to the reason and limitations of the rule. Thus Vattel lays down what a nation engaged in a just war is allowed to do to her enemy: Book III., Chap. 8, "The whole is to be reduced from one single principle from the object of a just war; for when the end is lawful, he who has a right to pursue that end, has, of course, the right to employ all means which are necessary for its attainment. The lawfulness of the end does not give us a real right to anything further than barely the means necessary for the attainment of that end. Whatever we do beyond that, is reprobated by the law of nature, is faulty and condemnable at the tribunal of conscience. Hence it is that the right to such or such acts of hostilities varies according to circumstances. What is just and perfectly innocent in war in one particular situation, is not always so on other occasions. Right goes hand in hand with necessity and the exigency of the case, but never exceeds them. The sovereign who would preserve a pure conscience, and punctually discharge the duties of humanity, ought never to lose sight of what we already have more than once observed, that nature gives him no right to make war on his fellow men, except in cases of necessity and as a remedy ever disagreeable, though often necessary, against obstinate injustice or violence. If his mind is duly impressed with this great truth, he will never extend the application of the remedy beyond its due limits and will be very careful not to render it more harsh in its operations, and more fatal to mankind, than is requisite for his own security and the defence of his rights."

Unhappily Vattel's doctrine is an appeal to conscience rather than a statement of law. But if the reasoning commends itself it remains for precedent to make it law.

In a desperate struggle for existence a nation on the defensive could not be restrained from using every means and striking out in every direction. But when a war is waged merely in the assertion of some definite principle or for the attainment of some limited object, without imperilling the substantial integrity of either nation, then every means which might be expedient cannot be considered lawful. The cause and object of the war by the United States upon Spain is limited to obtaining the concession by Spain of liberty and independent self-government to a particular portion of her subjects. The right of intervention is claimed on humanitarian grounds, and is resisted on the point of honour of

sovereign right. Never could there be a clearer case for treating war as a duel, to be fought with regular weapons, by the appointed military and naval champions of the respective contestants. Never could there be less justification for resorting to the savage principle asserted in 1812, that war is a work of hate and destruction, in which the methods of hatred and the agencies of destruction may be used without limit, upon every subject, however innocent, to which they could be made to reach. Never was there better opportunity for setting an example assigning one more restraint upon the wickedness and destructiveness of international warfare. The captures have been comparatively small in number and value. It would be easy for the United States to make offer of compensation to the despoiled owners. At least the value ought to be deducted from the ultimate demand of a war indemnity.

I do not lose sight of the relation of this question to Canadian commercial interests. There has been a prospect of temporary gain to the trade of Canadian ports and Canadian carriers, through the peril to which the United States sea-going commerce is exposed, by liability to capture and destruction. This is a case in which the direction of our wishes will test the strength to which our morality has withstood the strain of the modern commercial spirit. I should hope for the honour, I will not say of Canada, but of humanity, that no consideration of temporary gain will prevent our uplifting our voices, in unison with the best thinking people of the neighbouring Republic, in appeal to the United States to take the course which will do honour to itself, to our great English race, to the civilization of which we boast, and to the humane and christianized principles to which we profess to adhere.

If the United States acquire military possession of Puerto Rico it will be a conquest and will be dealt with by the conquerors as may seem to them most in their interest. Their disposition of it is not a matter in which foreign opinion is likely to be invited or would have any weight. The possession of Puerto Rico will make one European Power the less to divide with the United States the naval oversight over the approaches to the future Isthmian Canal. Whether the canal shall be situated at Panama or Nicaragua will matter little. Its control will depend less upon commercial ownership or territorial title than upon practical naval ascendancy in the Caribbean Sea. There can be little doubt what will be the fate of Puerto Rico if the flag of the United States once waves over it. There will be plenty of opportunities in a settle-

ment for the display of national generosity without going the length of national quixotry, such as Great Britain so often exhibited at the conclusion of her successful wars in former centuries.

The Philippines seem to be the subject of some illusions. They cannot yet be described as a conquest. It is possible that no event of the war with Spain will achieve that result. There is nothing which the United States can conquer from Spain, or which Spain has it in her power to cede, except the possession practically of a few factories on the outskirts of a populous native territory, much of it resembling in its political conditions the Congo State more nearly than a European colony. The interior has been a mission field rather than a possession. It is probable that the Spanish Government has not maintained the religious orders so much as the missions have secured submission to the Government. The semi-christianized Malays and other tribes have now revolted and overthrown the dominion of Church and State alike. It will be those tribes rather than the Spanish Government with whom terms will have to be made to settle the future status of the Philippines. The suzerainty of millions of semi-independent Asiatics may on close contemplation not prove to be an inviting responsibility for the United States Government to assume.

The question will arise, what is to be done with Cuba; and the action taken by the United States will materially reflect upon her objects in instituting the war, and will influence the respect in which perhaps the whole family of English nations shall henceforth be held among the foreign countries of Europe.

The United States have undertaken the war upon a specific undertaking to pacify and then retire from the Island, as expressed in the published declaration, in the following terms: "Fourth: That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction or control over said Island, except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the Government and control of the Island to its people."

A disposition has been exhibited in a portion of the United States Press to assume that the disavowal of annexation is no longer binding, because the Spanish Government assumed the initiative of hostile action and dismissed the United States Minister in anticipation of the delivery of the ultimatum. Stronger ground might be taken. An ultimatum is a tender of conditions of peace. If the tender is not accepted, the offered conditions may be pre-

sumed to be withdrawn. But if this technically discharges the obligation to Spain it may still remain with regard to foreign nations. The old writers on international law made much of the necessity of the causes and objects of war being declared not only to the adversary but to neutral nations.

Thus Vattel: "A sovereign is to make the declaration of war public within his dominions, for the information and direction of his subjects. He is also to make known his declaration of war to the neutral powers, in order to acquaint them with the justificatory reasons which authorize it—the cause which obliges him to take up arms—and to notify them that such or such a nation is his enemy, that they may conduct themselves accordingly. This publication of the war may be called declaration, and that which is notified directly to the enemy, denunciation; and indeed the Latin term is denunciatio belli."

Although a publication or declaration to the neutral nations of the causes of the war may not be technically so indispensable as Vattel sought to establish, yet the terms of a justification, actually made, have a certain obligatory force, for a reason implied, but not mentioned, in Vattel's reasoning. It is in view of everything contained in such a declaration that other powers determine whether they will remain neutral, or whether they will unitedly interfere, or severally ally themselves with one or other of the original parties to the war. The nations which have so held themselves neutral will expect the terms and conditions, announced as the cause and purpose of the war, to be adhered to after its conclusion.

Europe has never ceased to keep Great Britain in mind of the undertaking upon which, in the presence of Europe, she entered into possession of Egypt; namely, that she would remain as long as the condition of the country made it necessary. It was an elastically expressed condition, and is not likely to be fulfilled as long as the inhabitants of Egypt are principally Fellaheen, and the ruling classes Mahommedans; nor as long as the departure of Great Britain would cast the reversion of supremacy upon the corrupt and oppressive powers at Constantinople. Europe is unlikely to insist on a recession of Christendom before Mahommedanism.

In the case of the United States the disclaimer of annexation and the undertaking to retire when pacification is accomplished, are clear and definite. Exact fulfilment may be insisted upon with

all the influence of the Council of nations, in whose presence the pledge was made. No doubt the United States may find plentiful examples of perfidiousness in European history. The question for herself is whether it will be to her advantage in the long run to imitate them. As a newcomer in the great world of international politics, she has her character to make.

A curious rumour was reported by the Times' correspondent at Madrid: "Once or twice General Woodford used in the presence of the Spaniards who were not officially connected with the negotiations, but who were in intimate private relations with influential personages, certain vague expressions which were rightly or wrongly interpreted to mean that an amicable arrangement, satisfactory to all parties, might be found in some financial operation. At a very early stage of the negotiations important information emanating from a trustworthy source in Washington reached the Spanish Government, and even found its way in a diluted form into the Spanish newspapers. It was to the effect that a very wealthy syndicate had been formed for developing the enormous natural resources of Cuba, that it was ready to take over the Cuban debt on condition of being entrusted with the financial administration and protected by a guarantee of the United States Government, and that the scheme had found favour in the eyes of President McKinley. With regard to the question of sovereignty the syndicate was quite indifferent, and was ready to acknowledge Spain as its nominal overlord, and even pay to the Spanish Treasury a small royalty on its mining operations, provided always that it was in no way hampered by the Spanish Government or by Spanish officials. It is not surprising that Mr. McKinley should have regarded the project with favour, because it semed to furnish a means of bringing Spanish domination in Cuba to an end without the necessity of going to war and without using even such a disagreeable term as 'the sale of the island.' More than this, it helped the United States Government out of a serious difficulty. It is no secret that Mr. McKinley, like very many of his countrymen, regards the absorption of Cuba into the United States as the inevitable ultimate solution of the Cuban question, but he perceives clearly the practical inconveniences and the serious dangers of immediate annexation. For this reason he would like an intermediate transitional stage during which the people could be educated up to the level required for absorption."

Whether or not such a syndicate proposition was secretly en-

tertained by the President before the war, and whether or not such a syndicate still stands ready to carry out the scheme, it is inevitable, in case the United States Government controls Cuba, that an abundance of schemers will seek to make the United States Government, or its representatives, the engine to obtain concessions and other advantages for themselves, at the expense of the inhabitants. It was virtually for the suppression of the forced exploitation of the Cubans by foreigners that the American people undertook the expulsion of Spain. Will they consent to replace Spanish exploitation by exploitation through an American syndicate, under the protection of a United States army of occupation ?

Unhappily the state of Cuba will, very likely, too truly resemble that of Crete. The war has been more or less a civil war between the two parties, the Spaniard born settlers and the native Cubans of various origins. Divided as these two parties will have been by bitter conflict in arms, reconciliation and fair and honourable co-operation will be a distant probability.

Is the United States to take sides in this division of parties by expelling the Spanish element or by keeping them under subjection to the other party by arms ? I cannot believe that the people of the United States will desire to re-enact in Cuba the scandal of the carpet bag Governments of the Southern States. If the United States Government, on the expulsion of the Spanish troops, retires at once from Cuba, it leaves, in all probability, a state of affairs more hopelessly disastrous than that which it entered to terminate. The promise of pacification would be unfulfilled. A course which most obviously corresponds with the constitutional situation created by the resolution declaring war, also corresponds best with the European precedents in Crete and Egypt.

The resolution of Congress excludes Cuba from Congressional jurisdiction, by the declaration that the control shall be only a control and possession for pacification, that is, necessarily by the military forces. Under the Constitution of the United States the command of the army outside of the boundaries of the United States is vested in the President. Through the army, acting under the directions of the President, Cuba may be occupied and controlled until the time comes when a real pacification is accomplished, and the island is fit to be left to the government and control of its people.

The precedents of United States military administration of the Indian and other departments give every reason to expect that

in their hands, responsible only to the President, the trusteeship of Cuba would be honourably discharged. If military Commanders would be fitted for the whole duties of civil administration, the United States possesses men not unlike the stamp of civil administrators who have made so honourable a record for Great Britain in India and Egypt. Their services have been lent to China, Egypt, and Japan, where they have displayed not only abundant ability but that rarer and higher quality, the spirit of trusteeship. Under such auspices, provided successive Presidents were permitted to employ them, American, British and other European settlers might be attracted to share in the development of the island. In time these would become a moderating and probably controlling third element of the population, and a basis would then exist for peaceable and businesslike self-government. Following the precedent which it was necessary for Great Britain to make in Egypt, a firm and honest military Government must not only be established, but assurance given that its administration will continue to secure peace and protection; and that enterprising settlers will not be prematurely abandoned to anarchy or a ruinous regime of adventures.

The United States administrators cannot honourably either directly, or through any pretence of local autonomy, make the control of revenues and taxation a means of excluding the trade of foreign nations. A military Government would have the right to charge the revenues with the expenses of the occupation and to levy the necessary imposts. But inasmuch as the declaration of Congress has disclaimed sovereignty, jurisdiction or control, except for pacification, the British methods in Egypt will be obligatory in honour in respect to the methods of raising revenue. To give a preference in trade to the United States would be a violation of the trusteeship, and a breach of the principle of the undertaking given in the face of Europe.

United States occupation would involve another embarrassment arising out of the peculiar status under the initiatory declaration. Recognizing no insurgent government or status of independence, the United States, by necessary implication, acknowledged the continuance down to that date of the actual lawful government over Cuba. The acts done by that lawful government, the laws declared and contracts created in respect of Cuba are valid and binding at this moment. Cuba now stands charged with a large public debt, lawfully, even if oppressively, made payable out of its

revenues by its hitherto existing Government. Inasmuch as the island is not to be a conquest of the United States, the United States will have no right or power on their own behalf to alter the status of the island in respect to these obligations. The island cannot become freed from them merely by virtue of any later assertion of independence by its own inhabitants. By the law and practice of nations, which Continental Europe may call upon the United States to respect, independence will not legally exist until there has been a treaty of peace between the original sovereign and the separated territory. The United States plenipotentiaries in 1783 recognized the necessity of such an acknowledgment from the King of Great Britain, and most anxiously exacted it, before proceeding to negotiate any other article of that most important treaty of peace. The United States may be in possession of Cuba by her troops but she cannot compel Spain to conclude peace and recognize the independence of the island. Terms of peace will, therefore, require to be arranged, and European nations may support Spain in withholding her consent, unless an equitable charge is agreed to upon the revenues of Cuba in respect of its existing debt, of which Spain is in a position of guarantor to the holders of the bonds.

Spain's claim in this respect will be immensely fortified if she abstains from the right of waging destructive war upon the United States commerce. The forbearance will give her a moral claim which the people of the United States themselves will feel obliged to recognize. The Spanish Government would, of course, be in a still better position if it were to treat for peace while still in possession of Cuba.

There is another and more magnanimous course, by which at the same time, the United States might relieve itself from many difficulties, and abandon Cuba to its own inhabitants, without responsibility for the use they may make of their freedom. The President's original position might be reverted to, by an interpretation of the ultimatum that would involve no stultification of the declaration by the United States Congress, that the people of Cuba are and of right ought to be free and independent.

This assertion, and the demand made in the ultimatum of the United States Congress, that Spain should withdraw her government and authority, would as a constitutional fact be satisfied by the continuance of Cuba under the nominal sovereignty of the Spanish Crown, according to a facsimile of the Constitution of

Canada. The bona fide concession to Cuba of a status parallel to that which Canada now enjoys would be followed by the withdrawal of the Spanish army and the neutralization of the island. It has been shown in the early part of this paper that the Confederation Act makes the Canadians practically free and independent. Are Canadians subject to the authority and government of any other nation? The same constitutional document implicitly negatives it.

Canadians are not less "independent" because a common Crown joins them in perpetual amity with other peoples, of whose Parliaments our Queen is also the head, the whole together constituting a vast and free Empire. Alliance is not dependence, nor does union imply subjection. Citizens of an American state are also part of a larger union under a President who governs. Are the citizens of the several states of the Union not free and independent? It will be difficult to convince Canadians that American citizens are free and independent in any sense in which citizens of the Dominion of Canada are not also free and independent. The form of monarchy is nothing. Canadians are not less free because the head of our Executive and Legislature dates her title back to an election in 1688, instead of to a date four years or less ago; nor because the succession is provided for otherwise than by a quadrennial revolution, not without its passions, its perils, and sometimes its corruptions.

The Cuban people may also be free and independent under a true national autonomic constitution, such as governs the relations of Canada to the Empire, with which as a whole she is united, but to no part of which she is subject. Under such a constitution Spain would not possess or rule Cuba, though the Queen of Spain would continue to be Queen of Cuba.

The declaration of the United States Congress in respect to the Cubans does not therefore literally involve any greater consequences than this: that the United States insists that the autonomic constitution granted to the island shall be so amended, and the letter so interpreted and applied, as to reproduce the spirit and practice which the British Constitution imports into the similar statutory Constitution of Canada. The withdrawal of the Spanish army is a reasonable condition, inasmuch as its presence would reduce the concession to a mere pretence. Neutralization of the island for military purposes might follow. Would not the adoption of this interpretation of its own declaration, by the United

States Government, throw upon the Government of Spain the guilt of a premature and unnecessary declaration of war? May it not open the door to a settlement which will relieve both nations of many difficulties? Last, but surely not least, may it not accord best with the wishes of the majority of the inhabitants of Cuba?

If the Queen of Spain is left to be nominal sovereign of the neutralized island, even Spanish pride need suffer no real blow, and Spain would be a gainer by her seeming loss.

This result ought not to be distasteful to the feelings of the conquerors. They have nothing to gain by adding internal disaster to military defeat. The ill-cemented constitutional structure of Spanish Government, built on modern and liberal ideals, would hardly survive an exasperating national humiliation. Moderation on the part of the United States, refraining from breaking the bruised reed, might earn the ultimate gratitude, in place of the perpetual hatred, of this historic, if long misguided and unfortunate people.

The glory and mission of the English nations (of which no small share belongs to the United States), is in the success of the great principle of government by the people. Through that channel has flowed the enlarging flood of economic improvement and economic justice, to which the world already owes so much and from which it has more to hope. Political pride and economic wisdom alike rejoice at the triumph of these ideas in every nation. Nothing would so much retard the advance, which Spain has been attempting in this direction, as a disastrous humiliation, plunging the nation back into the utter ruin of revolution and anarchy.

The first great need of Spain is solid national unity around a settled constitutional Government. For more than a century the unhappy country has been a prey to divisions and disorders, ruinous to its prosperity, demoralizing to Government and people. Torn by successive revolts and revolutions, it has been by turns a kingdom, a republic and an anarchy. The throne has continued to be the prize of rival pretenders, long after all other European countries had settled this first principle of the national establishment. While the central sun is subject to continual mutations, disorder must be the law of the system.

To too many Spanish minds kingship appears to be still mantled with ideas brought from the Middle Ages. They attribute to it disproportionate sacredness and importance. The throne is still treated as an inheritance of right and the coveted seat of

power. The schemes of the Carlists recall us to the Wars of the Roses. It seems to be hard for the Latin nations, notwithstanding that all are endeavouring to imitate the British Constitution, to grasp the conception of the Crown as simply a high office of trust, existing, in common with every other office of the State, at the will as well as for the benefit of the people, and subject to a trustee's responsibility to them. With their mental and legal training the Latin nations may be pardoned if they are slow to appreciate that unwritten but fundamental principle of the British Constitution. English lawyers of the old school long found it impossible to grasp the principles of equity which reversed much of the common law. British constitutional practice likewise has converted the simple lines of the Constitution to meanings precisely opposite to the forms. Even our own Sir Wilfred Laurier, a recent but loyal convert to Imperial union, has betrayed by his language on several occasions his incomplete grasp of the same principles, which, on a larger scale, are the key to our Imperial constitutional system.

If there is left in royal pretenders or advocates of republicanism any vestige of the pure and ancient blood of Spanish patriotism, they will recognize that now is the time to drop, not only once but forever, the dagger of revolution, constantly aimed for selfish purposes at the throat of their country. At one moment, in the presence of her misfortunes and her necessity, Don Carlos on the one side, and the Republican leaders on the other, announced their honourable decision to refrain from widening the wounds of their country in the moment of her agony. It may be that their self-abnegation only leaves room for the irreconcilable violence of anarchism and for the more sinister intrusion of the military adventurer. The perpetual surrender of doctrinaire theories and personal ambitions would be the best sacrifice that Spaniards could lay upon the altar of patriotism.

The scene, when the Queen Regent led the young Sovereign into the presence of the Cortes and threw the throne and nation upon the protection of their united loyalty, will take its place among the touching pictures of history. One would think that every remnant of ancient Spanish chivalry would have responded to that stirring and pathetic appeal. It moves even English blood by its resemblance to the strangely parallel incident in our own history. Under like circumstances of distress and disunion, Elizabeth at Tilbury summoned a divided people to rally for England's

sake to her support. We remember how Catholic and Puritan, in the presence of the nation's danger, responded to the appeal, abandoning their plots and forgetting their grievances. In that stern hour, when the Spanish terror threatened to overwhelm the rising nation, Elizabeth became for the first time truly Queen of England. The mighty flood rolled away harmlessly, leaving deep and forever consolidated the foundations of English national unity.

Spain is not England. English union has sprung and strengthened from the root of liberty in religious thought and political action, the very root which Spain, in the same period, was only too successfully extirpating from her soil. This bitter hour might bring home to Spaniards the words which the sublime genius of Schiller put into the mouth of King Philip II.:

> "The world is still, for one short evening, mine,
> And this same evening will I so employ,
> That no reformer, yet to come, shall reap
> Another harvest, in the waste I'll leave,
> For ten long generations after me."

The prophecy has worked its full accomplishment. After ten generations of self-wrought decay, Spain is reduced to vital extremity by the descendants of the conquerors of the Armada. Is it vain to hope that at last external pressure may produce consolidating effects upon her restless and disunited people? If her sovereign's appeal is responded to by her subjects, as Englishmen responded to Elizabeth at Tilbury, thanksgiving will arise not only among the friends of Spain but from every true believer in the cause of constitutional Government and every lover of the happiness and progress of nations. Such results might well reconcile Spain to the sufferings she must undergo and incline her well-wishers to forgive any technical wrong that may have been done her by the institution and in the course of the war.

There is an apparent harshness in the fate which tears from the lingering grasp of Spain her last possession in that New World which her adventurous discoverers first made known. It may seem more cruel yet to find the young nation which Spain helped to nurse into independent existence wielding the severing sword. The righteousness of the sentence is not to be judged by the virtue of the executioner. There is a justice which cries up from the ground. By the sword Spain loses that which she had won by a still more ruthless sword. Spaniards wrestle with the sons of

Spaniards over a soil once cruelly drenched with the blood and sweat of its primitive possessors.

It is true that within this century Spain has made great advances. She has become tolerant and constitutional. She had learned the necessity of applying a liberal system to her remaining American colonies. It is upon those who are displaying this new and liberal spirit that the long accumulating wrath has fallen. But so has it always been meted, since upon the Jews of the first century, Christian and Pharisee alike, fell the blood of all the prophets. The mild Louis the Sixteenth paid the iniquities of all the Louis. Liberal England was left to sign the bitter bond that recorded the severance, wrought by the folly of the last English king who aimed at being an absolutist. It is in the nature of things that great popular movements of opinion should produce their effects often too late; after judgment, once just, has been transmuted, by the progress of events, into untimely prejudice. The wave that rises slowly under the wind, works destruction on distant shores long after the originating impulse has subsided.

The loss of Spain's last colony may prove to be a kindness cruelly dealt. It was an ill-fated gift which the genius of Christopher Columbus, the enterprise of her mariners, and the skill of her soldiers brought to their nation. The mastery of the Indies set her upon a false course. It introduced into her bosom the taint of avarice and nourished in prince and people the lust of oppression. The possession of a colonial empire kept alive the worst influences in Spanish government. Where a carcase is the eagles will gather. Colonial offices offer prizes to self-seeking adventurers, who perturb government at home with the prospect of being quieted with lucrative opportunities at a safe distance. Freedom of speech—of the press, of Parliament—is the only defence against the corrupt use of the power by the agents of power, particularly in distant possessions. Corruption is a jackal that feeds at the heels of oppression. Sooner or later the jackal gnaws the sinews of the lion. Far gone is the condition of a nation when from that infection even the military profession is not free. It has been alleged that the corruption of Spanish generals, profiting perhaps by falsified pay rolls, will be found to account for the extraordinary prolongation of the Cuban war of rebellion.

As the result of the war the Colonial Empire comes to an end. The lusts that it fed, the corruptions that it engendered, perish with it.

It is not nations that fall but systems. Though ruin has come upon the house founded upon the sands, the people live and may build again more wisely. If there is in Spain any saving salt of honest public spirit this will be its opportunity to purge the Government from the corruptions which have brought it, step by step, and generation after generation, down to the present stage of decay.

Great Britain, taught by her errors, and fortified by her losses, after the separation of her first colonies, consolidated her system of free Government, and set about building up a grander empire on the new principles in which we participate to-day. Thus nations like men, may rise on stepping-stones of their dead selves to higher things. Let us hope that we may see Spain, humbled in the unprofitable pride of power, take counsel of her ancient courage, and begin once more, in the vigour of her purification, and in her regeneration unashamed, to take her place with honour before the old world and the new.

PROVISIONS OF THE BRITISH NORTH AMERICA ACT FOR UNIFORMITY OF PROVINCIAL LAWS.

By B. Russell, Q.C., D.C.L., Halifax, Nova Scotia.

Without pausing at the threshold to verify the assumption, I shall take it for granted that one of the prime objects of this association is to bring about an improvement in the form, if not in the substance, of the laws administered throughout the Dominion.

The substance of those laws, in Canada, as in every other democratic community, must depend upon the varying opinions and sentiments of the people, for which lawyers as such have no more claim to speak than any other class or profession. But the formal statement of the law, and the procedure by which its provisions are to be made effective, constitute the specialty of our profession, and no man can claim to have discharged his full duty as a member of that profession who has not, according to the measure of his ability and opportunity, endeavoured to make those formal statements and methods of procedure more clear and simple than he found them.

I know nothing that would entitle me to speak of the conditions prevailing in the province of Quebec. Our constitutional act bears witness to the tenacity with which the people of that province adhere to the principles that underlie the system they inherit, and the procedure to which they have been accustomed. Far be it from me to comment upon this disposition, to deprecate the perpetuation of that system or the constitutional provisions with respect to it, which were a necessary feature of the federal principle upon which our Union was established. But I suppose that the stoutest champion of the peculiar institutions of Quebec will concede that, however admirable and excellent the laws and procedure of that province may be, their excellency is not such as absolutely to preclude the possibility of improvement.

Of the conditions prevailing in the English-speaking provinces, I may speak with greater boldness. Our English law has been the subject of much exposition and no little criticism. It has been described as a medley of ancient customs, handed down

from the days of the feudal system, of badly assimilated excerpts from the civil law, borrowed without perfect intelligence, and with no acknowledgment at all, but put forth as the spontaneous and all but inspired wisdom of the Bench, slowly and spasmodically modified from time to time according to the caprice of individual judges, disfigured by the anomalies, and clouded by the uncertainties attendant upon such a course of development, depending in great measure upon the sheer accidents of litigation, and exhibiting only such marks of intelligent design as are apparent here and there in the haphazard results of desultory and patchwork legislation. "Chaos tempered by Fisher's Digest," is the witty description that has been applied to our system of common law. But the expression presents a partial and one-sided view of the matter. For, after all, anomalous as is our system in many of its features, defective as it must be conceded to be, in many respects in which it might without difficulty be amended, it is, nevertheless, but the natural and inevitable expression of what is most characteristic of us as a nation.

Our common law, or to speak more broadly, our whole body of positive law made up of common law principles and the modifications effected by legislation, from time to time, has, no doubt, its many curious and costly anomalies, its unquestionable incongruities and absurdities, but those who would bring a railing accusation against it, should remember that it embodies Magna Charta and habeas corpus among its provisions, that the petition of Right and the Bill of Rights have been wrought into its fabric, that it recognizes Free Thought and guarantees Free Speech, that the independence of the Bench, and the subordination of the army, bear witness to its crowning distinction as the expression of government by law, rather than by force, and finally that in the course of its steady and progressive development, it has become the formal embodiment and expression of a system which amid all the disquietude and uncertainty, the shadows and clouds and darkness that gather about the dynasties and governments of the continent of Europe, presents to the world the inspiring and assuring spectacle of a throne "broad based upon the people's will and compassed by the inviolate sea."

But while all this is a good enough answer to the cavils of the flippant and superficial detractor, it is no answer at all to the critic who pleads the necessity for reform. The voice that calls for amendment and reform, is as genuine an expression of national

character as are the conditions against which that voice is raised, and it is for the purpose of giving direction and effect to the call for improvement that this Association has, among other wise purposes, been established.

We have at this moment no less than seven fully organized legislatures, all clothed with plenary authority in their respective jurisdictions, and each of them, subject of course to veto provisions that need not be enlarged upon, having full power within the territorial sphere of its operations to change materially the framework of our social system. These bodies, although frequently accused of a pernicious activity, are by no means as active in their legislative capacity as they might be, or as there might have been some grounds for supposing that they would be. It is a comparatively rare thing for them to meddle in a radical way with the groundwork of our legal system. A wholesome consciousness of the complexity and difficulty of the task, a dread of the unknown and unknowable consequences of meddling with the fundamental principles governing our social and domestic relations, the knowledge that legislation of such a character is the proper work of experts, who do not, in too great number, find their way into representative assemblies, the bad luck that has sometimes attended the experiments of reformers, with more zeal than wisdom, who have occasionally tried their hands at tasks of such dimension and character, and last but not least, the *vis inertiae* to which, however far from commendable it may be, in itself, we often owe many of the best blessings of life, all these causes have had a deterrent effect upon our provincial legislatures, and have led them to confine themselves to legislation which, however important and necessary, has not been of a revolutionary or radical nature.

Within these limitations they have all been busily engaged in legislating on the same class of subjects, and have produced enactments that are many of them so much alike in all their leading outlines that the question has occurred to many persons why there should be any difference at all. On many subjects the provisions of their laws are in most, if not all of the provinces, exactly alike, or at least they are intended so to be, for on several subjects the intention of most, if not all of them, has been to adopt the law of England as it stands. Those cardinal provisions of the statute of frauds which govern the validity and authentication of contracts will do for a sample illustration. There may be slight verbal difference between the reproductions of these clauses in the differ-

ent provinces, but these have probably been unintentional. The design has been to adopt these provisions from the English statute book, in their entirety, without the change of a word or a syllable. And it would have been unwise to depart even in the smallest particular from the phraseology of an act almost every significant word of which has received its construction through a long course of litigation and decision.

The same thing is true of many other provisions taken from the English statute book, notably in connection with the law of wills and the law of evidence. These provisions have been extracted from the English statute book without the change of a single word, and this method of legislating has been pursued even to the incorporation of the mistakes and blemishes of English legislation. In some provinces, for example, we have adopted the provisions of the original Factors' and Brokers' Acts, which have remained unamended upon our statute book for many years after the anomalous character of those provisions had been discovered and amended by appropriate legislation in the Old Country. In other provinces we have allowed provisions of the statute of frauds to remain upon our statute book for many years after they had been properly modified by amending legislation in England; cases also have been discovered in which, while we have accidentally escaped, in our own copying, the mistake of the British draftsman, we have introduced confusion worse than that of the original English blunder, by re-enacting here the English amending legislation, the sole purpose of which was to correct the mistake which our copyist had not followed. These things are among the curiosities of legislation which will furnish a fruitful theme to some future commentator, and upon which we need not at present linger.

On the whole we have not gone far wrong in our adoption of English statutes. My impression is that we might well have gone farther in this direction, and that we might still go farther in following the lead of the skilled and accomplished draftsmen who have done so much for the simplification and improvement of the English statute book. Whenever an act has been adopted in England for the purpose of drawing out in succinct and definite terms the principles and doctrines applicable to any particular subject or class of subjects, and that act has, after the experience of years, been proved to be a lucid and accurate statement of the law, we can avoid much uncertainty and avail our-

selves of many advantages by making it a part of our own body of statute law. These conditions had, no doubt, been fulfilled in respect to the English act for the codification of the law relating to bills and notes, when ten years ago, or thereabouts, it was pointed out in a series of letters in the Toronto Mail what great advantages would be gained for us in point of certainty, lucidity and uniformity, if our own Dominion Parliament would at once proceed to re-enact the provisions of this statute here. The act was introduced by Sir John Thompson in the following session of Parliament and, after a twelve months' incubation, became the law of Canada in 1890. It was slightly amended in the following year, and has remained upon the statute book ever since without the change of a single word or letter, and I am quite certain there is not a merchant, a banker or a lawyer who would now consent to its being repealed. Whether the requisite conditions have been fulfilled with respect to the Sale of Goods Act, and the act to codify the law of partnership, may still be a debatable point. All that I wish to emphasize is the very great advantage that it will be to us whenever the time shall arrive at which we can with safety adopt in all the provinces the provisions of these codifying acts.

There are other subjects on which we have not copied the provisions of the English legislation in terms, but, the subjects of legislation being the same, the mischiefs of the common law being the same here as in England, the remedies for those mischiefs being, for this reason, necessarily similar there and here, we have followed the general course of English legislation without intending or attempting to conform to the phraseology of English enactments. In such cases as these, by our partial adoption of the terms of English statutes, thanks to the inventive ingenuity of our own legislators, to our method of borrowing one from another, and our great freedom in tinkering what we have undertaken to borrow, we have created a body of statute law which cannot be read continuously without producing the sensation of nightmare.

The law for the prevention of frauds on creditors by secret bills of sale, or as it may be otherwise better known, for the filing or registration of chattel mortgages, presents provisions of this character. The cleverest practitioners that we have in my own province have been at their wits' end to know how to make sure that they were complying with its provisions. Our courts have pronounced diametrically opposite decisions upon some of its

clauses. One section, as it appears in the Ontario statute book, and in a slightly modified form in the statute book of Nova Scotia, contains a sentence of not less than three hundred and sixty-three words, with no pause longer than a comma, with all manner of side-tracks and switches in the nature of subordinate and qualifying clauses, to distract the attention and confuse the intellect of the reader. I recall an occasion on which one of our most impulsive judges, after a long argument on the section at the Bar, seized the volume and attempted, in his characteristic manner, to take it with a rush, but was gently cautioned away by the counsel who was endeavouring to elucidate the matter, with the reminder that while there were some spirits that could be more easily exorcised, there was a kind that went not out without prayer and fasting.

I have thus far spoken of cases in which our statute law is absolutely identical in most of the provinces, and of those in which it is substantially similar in one or more. There remains to be considered the class of cases in which, although all the conditions and requirements in the various provinces are precisely similar, there has been no attempt, either by copying from a common pattern, or by borrowing from one another, to secure anything approaching to similarity in the laws of the several provinces, cases in other words in which, while the laws of the various provinces might as well as not, for all that can be suggested to the contrary, be exactly alike, there is every conceivable variety of provision made in the enactments of the different legislatures.

Now as to all these cases it is not to be denied that a plausible argument may be made for the condition of things as it exists. Plausible arguments always can be made for the existing conditions, but those arguments partake rather of the nature of apologies than of vindications. So far from deprecating the want of uniformity in the laws of the several provinces, we may be reminded how greatly we should value, not only the intrinsic charm of such variety, as a mere matter of aesthetic contemplation, but likewise its great utility as a process of legislative experimentation, and the results that must be obtainable from such efforts, in the field of comparative jurisprudence. All this and more could be urged by the plausible apologist for the existing conditions. But I make bold to say that viewed at closer range, these apologetic suggestions will not bear inspection.

Let us view them for a moment in the light of a few very simple and homely illustrations. Take, for example, the compara-

tively trivial matter of the computation of time, whether for the purposes of substantive law or in connection with the procedure and practice of the courts. We know pretty well what a month means, at least when the expression occurs in a statute, for most of our statute books have removed all doubt by declaring that the calendar shall control the matter. But we do not always know what is meant by a day, at all events, where more than one day is to be accounted for. There is not a statute book in Canada that will not, by the diversity of its provisions, require the practitioner to be more or less wary lest he fall into a trap, and expose his client to serious loss, by a failure to compute correctly a given number of days. Shall he exclude the first day and include the last? Shall he include both the first and the last? What precise form of words will indicate the one or the other method of computation ? Shall Sunday be included or excluded in the reckoning? At what hour shall the juridical day be considered at an end ? What shall be the effect of an act in the law performed after the close of the juridical day ? At what hour of the day must rent be paid or goods delivered ?

These and other questions can all of them be asked in respect to this apparently simple and intrinsically trivial matter, and you may find as many different methods of computation as there are questions, that are possible to suggest. Now, why should there not be absolute uniformity and unclouded certainty, in a matter of such obvious simplicity ? Why should a practitioner, loaded down with the weightier matters of the law, be obliged to lay down for the moment his burden, while he proceeds to tithe the mint, anise and cummin of such utter trivialities? Why should a man with an immortal soul be asked to turn up a statute and a practice book, before answering so simple a question, at the risk, it may be, of having a judgment set aside, or a trial postponed, or an appeal dismissed? Why should not ten days mean always and everywhere the same portion of time, whether for service of a writ, or for the giving of a notice of trial, or for the filing of a factum, or for moving a *rule nisi*, or for any similar purpose for which it is necessary that time should be computed ? I have chosen a small and trivial matter comparatively for the very reason that it is small and trivial, as the one most suitable for the purpose of illustration.

Take, again, the matter of verifying the execution of a document, whether for use in a court as evidence, or for the purpose of registering as notice of title. This is a matter of very obvious

inter-provincial interest. While men are going to and fro in the earth, it must constantly happen that documents have to be executed in one province which it is absolutely necessary should be registered in another, and that evidence which exists in one province should be required for use in litigation proceeding in the courts of another. The law of the situs in the one case and that of the forum in the other, require a compliance with the law of the province in which the document is to be produced or registered, as the case may be. We have the same classes of officials in all the various provinces. We have justices as thick as blackberries in some of them, and of notaries public all that should reasonably be required. Can anyone suggest a reason why there should not be some simple and uniform method of authentication which would be equally applicable, and equally effective in every province of the Dominion.

But why stop with mere questions of procedure? Take the subject of domestic relations and the rights of property dependent on the relations of domestic life. Can anybody suggest a valid reason why the position of a married woman with respect to her interest in her husband's property, or her control over her own, should be different in Ontario and Nova Scotia, in New Brunswick and in British Columbia? Or let us go still further, can any one suggest even a plausible reason why a degree of emancipation from the doctrines and fictions of the common law in regard to these rights and relations, which is not deemed too advanced and radical for the conservative legislators of the British House of Commons, should be regarded as too advanced for the far less complex conditions existing in the communities of this Western World? If not, what harm could arise from the application throughout the several provinces of the Dominion, of the provisions of the Married Woman's Property Acts of England, and the repeal of the incongruous and conflicting provisions of the law that disfigure the statute books of the several provinces?

What is true as to this topic is true *a fortiori* of the law as to the devolution of real estate, and the distribution of personalty. Human nature is the same thing in Ontario that it is in Nova Scotia. Parental and conjugal affection, filial duty and brotherly regard, are the same things in Halifax and in Vancouver, the same on the banks of the Saskatchewan and along the valley of the St. Lawrence. All the material relationships of life, of which our legal systems and doctrines are but the outward and formal

expressions, are essentially the same throughout the whole Dominion, and nothing but confusion, inconvenience and expense can result from the diversities and incongruities which, for thirty years of our life as a Confederation, we have as carefully maintained as if the salvation of the country depended upon their preservation.

We may well believe that the continuance of these conditions was not in the thought of the founders of the Union. They took care to provide for better conditions in the only way consistent with the general scheme of confederation rendered necessary by the circumstances in which they did their work. Article 94 of the Constitutional Act contains the provision with which we are all familiar, that, "notwithstanding anything in this act, the Parliament of Canada may make provision for the uniformity of all or any of the laws relative to property and civil rights in Ontario, Nova Scotia, and New Brunswick, and of the procedure of all or any of the courts in those three provinces, and from and after the passing of any act in that behalf, the power of the Parliament of Canada to make laws in relation to any matter comprised in any such act shall, notwithstanding anything in this act, be unrestricted; but any act of the Parliament of Canada, making provision for such uniformity, shall not have effect in any province unless it is adopted and enacted as law by the legislature thereof."

It is very greatly to be regretted that the terms under which Manitoba, British Columbia and Prince Edward Island were admitted into the union, make it extremely doubtful whether these provisions extend to any of those provinces. I am afraid it is hardly even doubtful that they are excluded. I cannot believe that their exclusion was the result of deliberate intention, but the conditions in Manitoba at the time of its admission would make it very difficult to present any argument, founded upon those conditions, which would control the grammatical reading of the act to provide for the government of that province. By the terms of that act the operation of this provision seems to be expressly excluded, and the terms of the act respecting Manitoba are substantially similar to those under which the other provinces have been admitted.*

Even subject to these limitations, the advantages to be derived from such an assimilation of provincial laws as the Par-

*It is open to question whether this statement is strictly correct. The expressions used are not very clear.—B.R.

liament of Canada, with the co-operation of the provinces, is competent to effect, are too manifest to require any demonstration. From the layman's point of view, the advantage that appears most striking and obvious is that by such an assimilation the law becomes more accessible and ascertainable. To the lawyer one of the greatest advantages that would result from the reform would be the increased and ever-increasing certainty. The larger the field over which a statute operates the more quickly its terms become defined. Each province has the benefit of the results attained by the labours of advocates and judges in every other province. Authorities multiply, doubtful points are made certain, obscurities are cleared, inelegancies and incongruities are brought to light, and removed by the requisite legislation, and the law becomes more simple, more uniform, more certain, and more conformable in every way to the ideal with which all laws in the very nature of things should be made as closely as possible to correspond.

The advantages that would result from such an assimilation are so manifest and so manifold that it is greatly to be wondered at, not only that the provisions of this section have not yet been brought into practical effect, but that in all the thirty years of our history as a Dominion, no responsible public man has ever yet, so far as I am aware, seriously addressed himself to the task of bringing them into effect. There are many reasons for this. Previously to the establishment of this society, there has been no very favourable opportunity for the exchange of views among the Bars of the several provinces, and thus one of the most potent and effective influences making for the improvement of the existing conditions has been almost wholly inoperative. Certainly, one of the first conditions to the success of any movement in this direction must be the creation of a strong and clear conviction of its desirability in the mind of the profession throughout the country. But while this is one of the conditions precedent to the success of such a project, it is unfortunately not the only one. A much greater difficulty in the way will be realized in the utter inefficiency and unsuitableness of the Dominion Parliament, with its present methods and maxims, for the prosecution of such an undertaking. Much smaller and simpler undertakings, in the line of law reform, than what is now proposed, have already proved too strong for the digestion of the House of Commons.

We have had an object lesson recently afforded to us of the nature of the difficulty now under consideration, in the progress,

or perhaps I had better say, the want of progress of Mr. Fortin's Insolvent Bill. Nobody can reasonably deny the necessity for an insolvent act of some kind, for no commercial nation can well exist without some sort of a law of bankruptcy. The subject of bankruptcy and insolvency is expressly assigned to the Dominion Parliament, and that Parliament legislated upon the matter in 1869, and again in 1875. Since the repeal of the later statute, there has been no insolvency law, properly so-called, in effect throughout the Dominion. But so keenly has the need of some such law been felt, that in the absence of Dominion legislation, the various provinces have been obliged to do the best they could to supply the place.

Thanks to the liberal construction placed upon the description of provincial powers in the British North America Act, and to the ingenuity of the lawyers in the Ontario Assembly, the provincial legislatures, or some of them, have managed, by sailing pretty close to the wind, it must be candidly confessed, to produce a statute which the courts have, by what some persons have thought was rather a *tour de force*, been able to sustain, which does in fact fulfil many of the requirements of an insolvent law. The existence of these statutes proves the necessity for such a law. The fact that they exist in some provinces, and not in all, shows the inconvenience of occupying the field intended for Dominion legislation by straining the powers of the provincial legislatures. We shall always, under this method of legislation, be subjected to the inconvenience, or at least the risk, of having as many different kinds of law as there are different provinces in which it may be enacted. Apart from the advantage of uniformity, to which I have already alluded, there are special reasons that call for uniformity in the provisions of the law relating to bankruptcy and insolvency.

This is one of the subjects in which foreign nations are, perhaps, even more deeply interested than the people of our own Dominion, and it is therefore a subject upon which, above all others, the laws of the whole Dominion should be uniform. When a merchant in London or Berlin, or it may be in Australia, or Hong-Kong, desires to know what security he will have that his goods will not be taken to pay the home creditors of his debtor, and leave the foreigner in the lurch, it must be obvious that it would be of the very greatest importance that he should be able to deal with the Dominion as a unit. It must be perplexing and exasperating to him, in the extreme, to be obliged to consult six or seven different

statute books, or, still worse, to realize that his legal adviser is obliged to take a preliminary course in the geography of Canada before he can even put himself in a position to prepare to advise him on the legal merits of his enquiry. It is not creditable to a country, as far advanced in civilization as Canada, on whose behalf the claim of nationhood has been so prominently and emphatically asserted, that it should present to the rest of the world, in respect to this question, the spectacle that it does. This has been felt by many persons for years past, and yet the same reluctance has been felt in dealing with the question in the Dominion Parliament, no matter what party has been nominally in control of the House of Commons.

Why is it that so much difficulty is experienced in dealing with what is apparently so simple a matter, and securing the enactment of a law of such evident and admitted necessity? The answer is not difficult. Experience has shown that under present conditions, no important and debatable measure can pass the House of Commons except under the patronage of the Government for the time being. The fate of more than one measure of intrinsic excellence has illustrated the truth of this remark. Its truth did not need to be demonstrated, for it is one of the commonplaces of parliamentary philosophy. Now the conditions under which a measure can be taken under the patronage of the government are extremely stringent. The party system makes it the duty of an opposition to oppose. We have, indeed, been told during the present session, that it is their duty to suspect something wrong even where nothing whatever of a questionable character is apparent, to maintain at all times that "spirit of watchful jealousy" that Matthew Arnold used to satirize so cleverly, as displayed by the narrower organs of religious opinion in England.

For the purposes of a government measure, on any really debatable question, you must first of all begin by setting aside a body of representatives, numbering usually almost half of the whole membership of the House. Now, if it were possible to carry this process to its logical conclusion and throw the proscribed half out of the reckoning altogether, it would be quite a simple matter to get things done. A majority of those that were left could carry the desired measures to a successful issue. But that is just where the difficulty arises. This cannot be done. If there is any considerable minority of the membership, on the government side of the House, to whom a proposed measure is distasteful, that is the

end of the matter. 'No government can depend upon carrying its measures through the House with the votes of the opposition, and hence it is necessary that after reckoning against you nearly half the membership of the House of Commons, your measure must be such as to secure enough votes among those that remain to command a majority of the whole House.

These are certainly hard conditions. Not one measure in five that could be named as meritorious, if not essential to the good government of the country, can stand such a test as this. A measure may be such as should commend itself to the unbiased judgment of the overwhelming majority of the members of the House of Commons. It may be such as the overwhelming public opinion of the country would approve. I may be altogether mistaken, but I am under the impression that Mr. Fortin's Bill complies with both of these conditions. Nevertheless, it may not be such a measure as a government under our system would be justified in venturing to introduce. Differences of opinion may exist, and in respect to this particular measure, differences of opinion probably do exist, of such a character as to deprive it of the support of an influential minority of the members on the government side of the House, and leave it dependent for its success upon the votes of the opposition. No government, whether Liberal or Tory, will willingly expose itself to the risks of such a situation, and hence, wherever the party system prevails, it must always be the case that measures of the greatest possible importance and utility must depend on the initiative of individual members, and the support of an unorganized majority of the House.

Left to this independent initiative and this unorganized support, we may easily anticipate the fate of the measure that comes forward under such depressing auspices. The absorbing nature of party struggles in a House composed exclusively of party politicians and representing a constituency in which it is the received maxim that politics is war, the imperious claim of party controversy, to engross the whole energy of the members, and consume all the available time of the House, make it at present practically impossible to secure the time and attention requisite for the adequate consideration of any measure, no matter how interesting or important it may be, which does not directly or indirectly affect the fate of the administration. Parliamentary authorities and publicists of eminence have frequently bewailed the existence of these conditions.

The remedy is easy to suggest, but it is not safe to predict that it will ever be adopted. There are enough lawyers in the House unconnected with the administration of the government to form a very strong and able committee to whom such measures, of a non-political character, as I have mentioned, might well be referred for consideration. On the government side of the House, there is always much of course to engage the attention of members outside of their duties as legislators, but even on the government side there are a number of men representing small and not too exacting constituencies, who could easily find time for the full and careful consideration of such subjects. On the opposition side of the House, the members enjoy a happy immunity from the cares and worriments that always beset, more or less, the supporter of the party in power, and there must be a number of able and accomplished lawyers among them to whom it would be a blessed relief from the ennui of a long parliamentary session, to find some such useful occupation for their vacant hours. Left to their own devices, these honourable members must prove, to the greater or less inconvenience of the gentlemen on the Treasury Benches, the truth of the saying that "Satan finds some mischief still for idle hands to do."

If I were the government I would consider it an excellent idea to give these members some serviceable tasks of public utility to perform that would leave them as little time as possible, and certainly much less temptation than they have at present for hatching schemes for the annoyance of the administration. I would select a strong committee from among the lawyers of the House, without respect to party distinctions and with a sole regard to their known ability and knowledge as lawyers, and their presumable skill and judgment as draftsmen and legislators. I should let them do their work as a grand committee of the House, with the certainty that the results would justify a very large degree of confidence in the wisdom of their conclusions, and, without accepting any responsibility as an administration for the endorsement of their proposals by the House as a whole, I should see to it that a sufficient portion of the time that is now wasted in dreary and meaningless debate, in long and wearisome harangues to the gallery, as represented by the Hansard reporters, should be devoted to the reasonably full and fair consideration of projects of public utility and permanent interest, brought forward as the results of the committee's labour.

By the adoption of some such expedient as this, the House of Commons could be made a most efficient instrument of the reformation of the law. The active and friendly co-operation of such a society as this could be confidently depended upon. The approval of the public, or so much of them as would be naturally interested in tasks of this character, would be cordially given to the undertaking, and we should have at length some reasonable hope of the eventual realization of the time foreshadowed by Cicero in a passage quoted long ago by Lord Mansfield, and borrowed from him at a later day by Mr. Justice Story:

"Non erit alia lex Romae alia Athenis, alia nunc alia posthac set et apud omnes gentes et omni tempore una eademque lex obtinebit."

CONCERNING CORONERS AND CORONERS' INQUESTS.

BY J. E. FAREWELL, Q.C., WHITBY, ONTARIO.

The office of a Coroner is of so great antiquity that its commencement is not known. The holders of the office in modern days preserve the fitness of things by living long in the land. The office existed in King Athelstan's time. The officer has been known under various designations, Coronarius in the time of Richard the First, Coronator in the Magna Charta, Coroner in our Statutes and in the Scotch Law, and by the usage of country people he is a Crowner. Shakespeare, in Hamlet, makes one of the clowns speak of "Crowners' quest law."

The Coroner was for many years a most important officer in connection with the administration of Criminal Justice, particularly as to enquiries as to the cause of death of persons found dead or who had died under suspicious circumstances. Before the Magna Charta he could not only receive accusations as to offenders but could try them; after that date upon the inquisition and finding of the Coroner's Jury, committal for trial followed, and the accused might have been put on his trial upon the finding of the Coroner's Jury, without a Bill having been found by the Grand Jury. Since the Criminal Code this cannot be done, neither can the Coroner on the findng of his jury commit a suspected person for trial, but only to a Justice of the Peace, when all evidence material to the prosecution and that offered by the accused has to be taken.

It is important, in view of these changes, to consider whether the advantages of enquiries by a Coroner's Jury are sufficient to warrant the retention of this mode of eliciting information as to the commission of crime or whether some substitute can not be found by which the work can be better performed with less expense and circumlocution.

The necessity for enquiry "as to the cause of death where any person is slain or has suddenly died," is as great now as when the Statute as to the office of Coroner, 4 Edward First, was passed.

The necessity of enquiry where the circumstances induce the belief that death has resulted from poisoning, starvation, or through the neglect or misconduct of other persons, in respect to death from the careless use of firearms, the deficient protection from accidents by machinery, by railway collisions and other disasters, the defective construction of modern buildings, overloading of steam vessels, is very great.

It was claimed that the practice of investigating the causes of sudden deaths was much abused, and that inquests were held when the sole advantage resulting from the investigation was the pecuniary advantage to the Coroner and his constable, while the families of the deceased persons were annoyed and harassed, and the time of the Jurors was wasted.

With a view to economy, the Legislature of Ontario has provided that the Coroner shall not be entitled to the fees for holding an inquest unless a declaration under oath be made by the Coroner prior to the summoning of the Jury, that from information received by him he is of opinion that there is reason for believing that deceased did not come to his death from natural causes or from mere accident or mischance, but came to his death from violence or unfair means or culpable or negligent conduct of others, requiring investigation by an inquest. This provision has very considerably lessened the number of inquests and the expenses of this department of Criminal Justice.

While this is commendable, the question is, has this saving been judicious and altogether contributory to the proper administration of the Criminal Law ?

Let us see how the matter works in practice. A sudden death is reported to a Coroner with little or no information as to the circumstances. If he visits the locality, no matter how distant, and finds on enquiry that it is a case of accidental death, or death from natural causes, there is no inquest, and there is no provision for payment of his travelling expenses, to say nothing of his time.

In the absence of information as to the circumstances, he is not likely to undertake a journey to make enquiries nor to make the affidavit required by the Statute before holding the inquest, and there is no investigation, although it may be a case in which it would have been highly proper to have held one.

If, however, in the absence of information he is rash enough to make the affidavit and issues his warrant, he may, on enquiry,

when he reaches the locus in quo, on being satisfied that an inquest is not necessary, withdraw his warrant and receive remuneration for his travelling expenses and time.

If he lives near enough to the place of death and conscientiously makes an enquiry before commencing proceedings he probably applies to the very persons, who, if it was not a case of death from natural causes or accident, were responsible for the death. In which case the answers to be given have probably been carefully considered before the commission of the crime, or at any rate before the Coroner's arrival. Unless the Coroner is fortunate enough, while making his enquiries, to meet with someone who was a witness to the transaction or some person who knew the business relations of the deceased, and the character of the persons who committed the offence, and who is courageous enough to give him information, the probability is that the Coroner will decide without evidence under oath, the very question which it is the object of a Coroner's inquest to decide. The body is duly embalmed, by a registered embalmer, arsenic and other substances, which doubtless are the best preservatives of a dead body, and the most destructive to a living one, are injected into the stomach and intestines and down the throat of the deceased. The body is buried. A suitable return is furnished to the Division Registrar of deaths and the expenses of an inquest are saved. Weeks, perhaps months, afterwards, circumstances strongly tending to show a crime has been committed are brought to the notice of the authorities and an inquest is probably held when the body is so far decomposed that no valuable results can be obtained by a post-mortem examination. As a doctor once said to me, "about all we can do is to smell the body." The holding of which inquest in the time of Hale and Hawkins would have resulted in the imprisonment of the Coroner. By this time many important circumstances, which would have been fresh in the minds of witnesses at the time of death, have been forgotten altogether, or the witnesses have or claim to have just such a hazy recollection of the facts as is quite sufficient for counsel for the defence to build up a case of doubt for perplexing the jury at the trial, for example, Reg. vs. Stearnaman.

The people of this Dominion are an active, restless people, and not attached to the soil as were the people in the days when Coroners' inquests were first established, and it frequently happens that persons who could have given material evidence at the time

of death, in the ordinary course of events are far distant or have disappeared as if the earth had swallowed them up, or may have been induced by the friends of the accused to leave the country, by the time that suspicion as to foul play has been aroused.

Cases will occur, to almost every practitioner, where great expense has been incurred, and convictions have not been obtained because there was a failure to hold a strict investigation at the proper time: *e.g.*, Hyams Case.

The holding of a Coroner's inquest, where a crime has been committed, is a matter requiring much time and careful research. The Coroner's Jury, until recently, were not paid in this Province, and such payment is probably a new departure from the ordinary practice. Jurymen become impatient at the delays which to them seem needless, and the examination of many witnesses, who could probably have furnished important testimony, is dispensed with to the detriment of public interest. In a preliminary investigation before a Magistrate, the prosecuting counsel, if any is retained, having learned the bias of certain witnesses, may fear to call these witnesses, lest they should give adverse evidence without eliciting anything favourable to the prosecution, and if the witness succeeds in withholding facts, which should have been proved, he will not be within the jurisdiction at the trial, and his depositions will be read.

Is it absolutely necessary that investigations of this kind should be made by a Coroner's Jury, the members of which are often friends of the person who should be accused or friends of his relatives ?

Local Coroners' Juries or certain members of them, I have no doubt, for these reasons, or because they were financially interested in the accused, have refused to find verdicts which the circumstances brought out in evidence required them to find in discharging their duty properly. A disagreement of the Jury or a verdict exonerating the accused from blame, affords a splendid certificate of character to the accused, on his subsequent trial, as being the honest opinion of a Jury of the neighbourhood, much better qualified to judge as to the circumstances than a Jury unacquainted with the character of the witnesses.

Why should not such investigation be held without a Jury, by some officer who has had experience in criminal matters, who is familiar with the law of evidence, and who has studied medical

jurisprudence, this officer being paid by salary, so that no question as to prolonging the investigation for his own pecuniary advantage could be imputed to him ? Why are Coroners generally doctors ?

The evil arising from the impatience of Jurors to have investigations closed would be done away with, and where Jurors are paid, this expense would also be saved. While Jurors are required, it is just that they should be paid, but the fact that they are to be paid embarrasses the Crown Prosecutor and Coroner as to postponing inquests, even where they have good ground for supposing that additional information can be had by such adjournment.

If investigations are held by one person, with power to examine witnesses under oath, all the advantages of an inquest are obtained and a postponement would not add to the expense and would probably prove most advantageous in procuring evidence.

The duties and practice of the officer known as the Procurator Fiscal, in Scotland, or the County Crown Attorney in this Province, suggest the proper person to have charge of such investigations. When the investigations have progressed so far as to point to the person to be accused, that person might be represented by counsel, and the evidence taken thereafter could be made usable at the trial in the event of death of witnesses. There would be a saving of expense in this way. As matters are at present conducted, the County Crown Attorney is present at the investigation. The expense of the Coroner and the Jury would be saved. The evidence might be taken by a shorthand writer with the advantage of greater accuracy as to the statements actually made by witnesses. The evidence need not be transcribed in the event of the investigation resulting in a finding that death was clearly due to accident, mischance, or natural causes. The accused could have the right to be represented by counsel, and evidence taken when he was so represented might, in the case of death, or absence from the Province, be used upon the trial.

When a sufficient case had been made for laying an information, the accused could be arrested and brought before a Magistrate, as in the case of a finding by a Coroner's Jury.

If it is advisable that the person to hold such investigation should be a person skilled in medicine and surgery there should be but one Coroner in a County or group of Counties, and he a person well versed in medical jurisprudence. The proceeding pro-

vided by the Ontario Statutes, R.S.O., Cap. 275, is a practice analagous to the one above indicated. There a Justice of the Peace, on receiving a written request from any officer or agent of an Insurance Company, with security for costs, proceeds to hold an investigation as to the origin or cause of any fire, and has power to send for persons or papers and to examine all persons who appear before him on oath, etc.

It is submitted that the present system is unsatisfactory, the object being simply to obtain information, as to when, where, how and by what means the deceased came to his death, as no person can now be placed upon trial upon the finding of the Coroner's Jury, no matter how lengthy and exhaustive the proceedings may have been.

The presence of a Jury tends to prevent the thorough investigation of all the facts which should be enquired into.

The verdict of a Coroner's Jury, from local prejudice or interest, results at times injuriously to the accused or to the due administration of justice.

The requirements of the Statutes may prevent a conscientious Coroner from holding inquests at the time investigations should be held.

The evidence is often badly taken, either from the Coroner's misconception as to what is and what is not proper and important to be recorded, or because, owing to the age or infirmity of the Coroner, a clerk is often employed who has not the least experience or judgment as to what should be taken down.

When the evidence is read, the witness frequently denies having made the statements, or on noticing the effect of it, so amends it as to render it worthless.

Where proceedings are required to be taken on civil process against a Sheriff, the Coroner's services might be retained—one would suppose, however, that a Sheriff of an adjoining county would discharge the duty as well as a Coroner, and that the Statute might easily be amended giving him that power. It is submitted that the propriety of dispensing with the services of Coroners' Juries should receive the early attention of the Legislature.

TRANSACTIONS

OF THE

SECOND ANNUAL MEETING

OF THE

CANADIAN BAR ASSOCIATION.

HALIFAX, N.S., 31ST AUGUST, AND 1ST AND 2ND SEPTEMBER, 1897.

The first session of the second annual meeting of the Canadian Bar Association was held at the Law Library of Dalhousie University, the President, the Hon. J. E. Robidoux, Q. C., of Montreal, in the chair.

At the opening of the meeting the following programme was announced :

TUESDAY, AUGUST 31ST.

Meeting at Library of Dalhousie University at 10 a.m.

1. Reading of minutes and reports from Treasurer and Secretary.
2. Address by the President, Hon. J. E. Robidoux, Q.C.
3. Enrolment of members.
4. General business.
5. Meeting at Legislative Council Chamber at 2 o'clock sharp.

Address of welcome by His Honor the Lieutenant-Governor to the Association and members of the Behring Sea Commission ; to be followed by Hon. Don M. Dickenson, President of the Bar Society of Michigan, and a member and delegate from the American Bar Association.

6. At 3 o'clock, excursion on government steamer Newfield to Bedford Basin and Arm, concluding with lunch at Lawlor's Island, as guests of the Bar of Halifax.

WEDNESDAY, SEPTEMBER 1ST.

Meeting at Library of Dalhousie, 11 a.m.

1. Paper by O. A. Howland, of Toronto, M.P.P. Subject, "An International Court."
2. Discussion.
3. General business.
4. Afternoon, 3 o'clock, drive through park and suburbs and past the forts, ending by visit to the public gardens.

THURSDAY, SEPTEMBER 2ND.

Meeting at Dalhousie Library, 11 a.m.

1. Discussion on uniformity in registration and indexing of titles to land.
2 General business.
3. Afternoon, at 3 o'clock, meeting at Studley quoit grounds, as guests of Studley Quoit Club.

After the reading of the minutes and the Treasurer's report, the President delivered his annual address as follows :

GENTLEMEN,—This is the first time, since its foundation, that the Canadian Bar Association meets in regular convention, and its history is brief.

During the course of the Summer of 1896 the members of the association gathered together in the city of Montreal for the purpose of discussing the project and laying the foundations of our society. Representatives came from every part of Canada, and the bars of every province were, I may be allowed to say, brilliantly represented. The idea of forming one grand association of the members of all the bars in Canada was not a new one. For several years this idea had taken hold in the minds of a large number, but, until then, circumstances had not arisen to bring about the accomplishment of the project.

The bar of the United States had just met in Saratoga. The importance of the labors of their convention, the weighty questions which were then discussed, while adding new lustre to the American bar, attracted public attention, not only on this continent, but also in the countries of Europe. The bar on that occasion had fully demonstrated its power and its worth. England did not disdain to be represented at that meeting by a man who has no superior in the ranks of the English bar, the distinguished lawyer, and now an eminent Judge, Lord Russell.

The renown of that meeting, and the example given, there can be no doubt, contributed a good deal to determine the initiative taken by the leading lawyers of Canada of inviting the members of all the bars to a general convention in Montreal.

The idea of forming our association was not, however, carried out without meeting obstacles on the part of certain lawyers A fear existed in the minds of some of the lawyers of the Quebec bar that our association would ultimately undertake to impose uniformity of legislation on the people of Canada, and that the old French laws, to which the bar and the people of the province of Quebec are so profoundly attached, would be wiped out. Our friends of Quebec did not conceal their fears. The result was that our first convention was the witness of a long and animated discussion on the subject. This discussion, however, clearly proved that there was no intention anywhere to abolish our laws, and that, in any case, if our association desired to do so, it would be unable to succeed.

The question once settled, the members of the bar joined the movement, and applauded the creation of our association. To-day from one end of Canada to the other, the bar fully recognizes the need of such an association, and finds in its object nothing but that is praiseworthy ; nothing but that deserves the approbation and the encouragement of all.

What is, indeed, the object of our association ? It is to make of our bar a bar still greater. It is to create among all its members, whose minds have been given to the same studies, whose tastes are similar, whose education has been directed on the same lines, whose intellectual culture has brought together in the same world of ideas, it is, I repeat, to create between them, instead of purely professional relations, strong bonds of warm friendship. Our aim, then, can be resumed in one thought, which is altogether in the interest of civil society, and of agreeable social relations.

Our society has not only received the approbation of the militant portion

of the bar, but also commands the sympathy and good wishes of the bench. Of this we have already had ample proofs, for, last year, when, on the eve of separating, the judges of Montreal considered it a duty, and did us the honor, to grace our last meeting with their presence, Sir Alexandre Lacoste, Chief Justice of the highest court in the province of Quebec, voicing the sentiments of all, in an address admirable for its lofty ideas and its eloquence, offered us the felicitations, and gave us a masterly description of the grandeur and nobleness of our enterprise. This sympathy from the bench is still fresh and active.

This need of large associations among the members of the same profession and of the classes whose career is devoted to the acquisition of knowledge, seems in our day to be universally admitted. The human mind is too limited and the field of study too vast to permit any single individual, without the aid of associates in the same science, to master it in its entirety.

This remark is to be applied more especially to the callings in which science makes new conquests every day, determines and settles principles, where our acquired experience is limited, and our notions crude and imperfect. Who can fully appreciate the results of this collaboration on an extensive basis as a means of penetrating further into the arena of nature and science? And to give you an actual instance of the value and importance attached to such collaboration, it suffices to mention the fact that we have on our shores at the present moment a distinguished body of men representing two of the greatest scientific associations of England. I allude to the British Medical Association and the British Association for the Advancement of Science, which have not feared to cross the ocean and visit Canada to pursue their labors among us. They come here to meet and mingle with our men of art and science, and to make those interchanges of thought which are invaluable, and of which the learned men of the world alone can enjoy the luxury and the glory. (Applause.)

The science of law is undoubtedly positive in its nature. Law is a work of the will, pure and simple, whose interpretation is kept within narrow limits. But to have this interpretation wisely effected is it not necessary that the intellect should be well supplied by the study of the fundamental principles of ethics and fortified by the close reading of the works of our great legists and jurisconsults? If an association like ours cannot follow these studies in common, at least we can by our moral influence and action induce the bars of the different provinces to exact higher qualifications at the hands of those who seek to become members thereof. And in this way our association becomes useful in contributing to raise the standard of our profession.

In our day the bar deserves more than ever the attention and solicitude of the people. It has become a powerful factor in the accomplishment of the destinies of nations. Modern civilization has substituted new ideas for notions of the past. Among the civilized nations of the present century the tendency is to settle differences, not by force of arms, but by arbitration. The world seems at last to understand that if difficulties between individuals can be settled without recourse to physical force, but by the free and conscientious exercise of the judgment of a fellow man, the differences between nations should also be settled by tribunals, that they, themselves, may select. We may, perhaps witness revolutions among civilized nations, but our hope is great that the twentieth century will see no more of these disastrous wars, which have caused so much blood to flow during the course of this century. And to-day these words of the poet are truer than ever: "Cedant arma togae"

In these arbitrations the rights of nations will be upheld and defended, not by soldiers and bayonets, but by the champions of thought and the sturdy advocates of justice. What is now actually happening in your city of Halifax is sufficient indication of the truth of my contention. A hundred years ago the Behring Sea difficulty would have brought about a conflict between two of the greatest nations in the world. In our day the same two nations have handed

over the settleme of their difficulty to the forces of the human mind, and justice will be done in a greater degree than it the matter was left to the hazard of war or the unforeseen result of a battle.

And in passing allow me here to recall the fact that our Canadian bar won for itself, in the Behring Sea arbitration, a distinction and fame of which we may all well be proud. Among those who took part in that arbitration there were to be found members of our Canadian Bar Association, just as among those who are now engaged in bringing this matter to a final and friendly settlement, are also to be found members of our association.

The members of the bar are, moreover, called upon to play another important role in society. Politics seem to have for them an irresistible attraction. In the Legislature of the provinces and in the Federal Parliament of Canada it is, especially, lawyers who are to be seen in the first rank, and they are in their place. It is in order that those who are called upon to enact laws should be exercised beforehand in the study of law, and the more their mind and intelligence will have been formed by this study the better prepared they will be to fill the role of legislators.

Our association will afford the opportunity of becoming a public man of a more universal knowledge, and thereby fitting himself for the fulfilment of the weighty and responsible duties which are assigned to him by the confidence of his fellow citizens. Indeed, it is not to be expected that a lawyer who is in contact exclusively with the confreres of his own bar should become acquainted with the laws of the other provinces, or that he should scrutinize their statutes; he has neither the occasion nor the need to do so.

This work, which a lawyer would not undertake alone, he will do in our association, where committees are especially charged with studying the laws of the different provinces, so as to have the association as a whole benefit by the fruit of these labors. Our annual meeting will afford us a field where we will be able to reap, in a short time, an abundant harvest of knowledge that will be useful to all, and useful in the highest degree to the lawyer who is called upon to take part in the councils of the nation.

I have already said that the object of our association is to make our bar a still greater bar. Is that not, indeed, the result of our meeting, when the most distinguished members of our profession participate in its proceedings? The junior bar will find therein a subject of rivalry and good example to follow. The more numerous these meetings the greater the opportunity and incentive for them to put forth their best efforts and labors to secure a prominent position in their profession.

The horizon of the bar has therefore widened very much. It is only in our century, we may say, as least in certain countries, that they have attained this higher plane; but it is worthy of remark, as far as our own country is concerned, that there has been no important work, no remarkable progress accomplished without the lawyers taking an eminent part in them. And if we are allowed to assemble here, as representatives of the different bars of Canada, we are compelled to admit that the project of the Canadian confederation was, in a large measure, conceived and executed by the lawyers of the various provinces.

Even quite recently Canada has figured largely on the scene of Europe through the personality of her Prime Minister If Canada during the historic events of the past few months has occupied the first place among the colonies of the British empire, and also in the mind, not only of the British, but foreign statesmen, to whom can be attributed the honor and glory of her position if not to our distinguished confrere, the Right Hon. Sir Wilfrid Laurier? I make this statement knowing and feeling full well that even his political opponents would not pardon me if I were to overlook Mr. Laurier's name, when I am speaking of the mission accomplished by members of the Canadian bar for the advantage of our country. (Applause.)

If the bar has filled an important role in our country, if on another conti-

nent, and on more than one occasion, it has drawn to Canada the attention and admiration of the old nations of Europe, how much should we have at heart the ambition of continuing its proud traditions?

Our country, although holding a colonial position, is no longer a passive portion of the empire, but it has been given a voice, and has become an influence in the framing of the imperial policy, and the position which we have assumed alongside the other colonies makes it our duty to ascend the path of progress and not remain stationary thereon.

Among the different classes of society whose duty it is to build up our country, there are none who should hold that duty more sacred than the members of the legal profession. And if we should fail in the accomplishment of that duty we would cease to be worthy of the eminent position in society so freely accorded to us by our fellow citizens.

Let us, then, like our predecessors in the profession, contribute our share to make the annals of our country honourable and glorious. Our country is a prosperous one. Those who live here are satisfied with their condition. We love to dwell in a country where fortune smiles on us, but we love our fatherland, not for its wealth, but for the glory which covers it.

One word more and I conclude. The year in which we now meet is one that will leave in the history of the empire an ineffaceable imprint. For this is the year in which all the subjects of the British Empire rejoice over the sixtieth anniversary of the reign of Her Gracious Majesty the Queen. The sixtieth year of a reign marked by the example of all the virtues which honor a woman, a reign rendered illustrious by the wisdom of a Queen, made dear to her subjects by the respect of the rights of her people and her goodness toward them. And I echo the sentiments of all, I am sure, in giving expression to the admiration, respect and love which the bar of Canada entertains for our gracious sovereign.

I have said that one of the aims of our association was to create among the members more intimate relations and stronger bonds of friendship. This object is already attained, for the reception which has been extended to us by our friends of Halifax has been most cordial, and the pleasure we feel in meeting one another is most keen.

For my part I am especially gratified that the officers of our association decided to hold this convention in the city of Halifax, so attractive by its historical souvenirs and so charming by its progressive modernism. (Applause)

The Secretary's report was then read, and following it a committee consisting of Messrs. C. B. Carter, Q.C., F. L. Beique, Q.C., G. F. Gregory, Q.C., O. A. Howland, D. A. Mackinnon, B. Russell, Q.C., and R. L. Borden, Q.C., was appointed to nominate special committees.

The meeting adjourned at 1 p.m.

At 2 p.m. the members of the Association met at the Legislative Council Chambers, where an address of welcome was given by His Honor the Lieutenant-Governor to the Association and to the members of the Behring Sea Commission.

This address was followed by an address from the Hon. Don M. Dickenson, leading counsel for the United States before the Behring Sea Commission, President of the Bar Association of Michigan, and a member and delegate from the American Bar Association.

At 3 o'clock an adjournment was had to the Government steamer "Newfield," which had been placed at the disposal of the Bar of Halifax for the occasion. A very enjoyable excursion was then had round Bedford Basin and up the North-West Arm, concluding with a luncheon at Lawlor's Island, as guests of the Bar of Halifax.

SECOND DAY'S PROCEEDINGS

At 11 a.m. the Association re-assembled in the library of Dalhousie University. The President in the chair.

Routine business was proceeded with, and recommendations made to the council with regard to the annual fee, the next meeting, and proceedings to be had thereat.

A resolution was then passed by which the number of the council, exclusive of the officers, was increased from 8 to 21.

It was then decided to pos pone the reading of Mr. Howland's paper to the next morning at 11 a.m.

The meeting adjourned at 1 p.m.

At 3 o'clock the visiting members of the Association assembled at the Halifax Hotel, where carriages were in waiting. They were driven through the park, and suburbs, and public gardens, and afterwards were entertained at a reception by Mr. R. L. Borden, Q.C., and Mrs. Borden, at their residence, on the North-West Arm.

THIRD DAY'S PROCEEDINGS

The Association assembled at 10 o'clock in the library of Dalhousie University. The President in the chair.

After routine business, the Executive reported a by-law fixing the annual fee at $3, which was adopted.

Mr. O. A. Howland, of Toronto, then read his paper on "An International Court." On its conclusion, the thanks of the meeting were tendered to him for his valuable paper.

A committee for the nomination of officers for the ensuing year was then appointed, and a short adjournment took place in order to enable them to make their report.

Upon re-assembling this Committee and the Committee to nominate Special Committees reported, and the following officers and special committees were elected :—

HONORARY PRESIDENT. — Hon. Sir Oliver Mowat, K.C.M.G., Q.C., Ottawa, Lieutenant-Governor of Ontario.

PRESIDENT.—Hon J. E. Robidoux, Q.C., Montreal.

SECRETARY.—A. Falconer, Montreal.

TREASURER.—C. B. Carter, Q C., Montreal.

VICE-PRESIDENTS.—Hon. F. Langelier, Quebec; O. A. Howland, Toronto; C. S. Harrington, Q.C., Halifax; G. F. Gregory, Q.C., Fredericton; Hon. Fred. Peters, Q.C., Victoria; Aulay Morrison, M.P., New Westminster, B.C.; J. S. Ewart, Q.C., Winnipeg; Hon. F. W. G. Haultain, Q.C., Regina, N.W.T.

COUNCIL.—*Honorary Members*—Hon. David Mills, Q.C., Ottawa; Hon. Chas. Fitzpatrick, Q.C., M.P., Sol.-Gen., Ottawa.

Elected—Sir C. H. Tupper, Q.C., Victoria; Æmilius Irving, Q.C., Toronto; Hon. J. R. Gowan, Q.C., C.M.G., Barrie, Ont.; F. H. Chrysler, Q.C., Ottawa; Matthew Wilson, Q.C., Chatham, Ont.; D'Alton McCarthy, Q.C., Toronto; D. Macmaster, Q.C., Montreal; F. L. Beique, Q.C., Montreal; P. N. Martel, Q.C., Three Rivers; W. C. Languedoc, Q.C., Quebec; J. C

Noel, Q.C., Arthabaskaville; F. B. Wade, Q.C., Bridgewater, N.S.; Hon. L. G. Power, Halifax; D. McNeil, Q.C., Halifax; Hon. Wm. Pugsley, Q.C., St. John, N.B.; D. Mullin, St. John, N.B.; Hon. L. H. Davies, Q.C., Ottawa; J. T. Mellish, Charlottetown; D. A. Mackinnon, Charlottetown; E. V. Bodwell, Victoria; H. J. Macdonald, Q.C., Winnipeg.

COMMITTEE ON LEGAL PROCEDURE.—H. J. Macdonald, Q.C., Winnipeg; F. L. Beique, Q.C., Montreal; W. A. O. Morson, Q.C., Charlottetown; Hon. Wm. Pugsley, Q.C., St. John; F. H. Chrysler, Q.C., Ottawa; C. S. Harrington, Q.C., Halifax.

COMMITTEE ON LAW REPORTING.—Jas. Kirby, Q.C., Montreal; A. J. Trueman, St. John, N.B.; F. T. Congdon, Halifax, N.S.; R. G. Code, Ottawa; D. A. Mackinnon, Charlottetown, P.E.I.

COMMITTEE ON JURISPRUDENCE AND LAW REFORM.—Wm. Lount, Q.C., Toronto; C. B. Carter, Q.C., Montreal; D'Alton McCarthy, Q.C., Toronto; H. C. Saint Pierre, Q.C., Montreal; J. S. Ewart, Q.C., Winnipeg; Arthur Drysdale, Q.C., Halifax.

COMMITTEE ON LEGAL EDUCATION.—Æmilius Irving, Q.C., Toronto; Arthur Globensky, Q.C., Montreal; D. Macmaster, Q.C., Montreal; B. Russell, Q.C., Halifax; J. T. Mellish, Charlottetown.

COMMITTEE ON COMPARATIVE LEGISLATION.—Sir L. H. Davies, Q.C., Ottawa; O. A. Howland, Toronto; F. Langelier, Q.C., Quebec; D. McNeil, Q.C., Halifax; R. E. Harris, Q.C., Halifax; P. B. Mignault, Q.C., Montreal; Daniel Mullin, St. John, N.B.

COMMITTEE ON INTERNATIONAL LAW.—Sir Chas. H. Tupper, Q.C., Halifax; F. L. Beique, Q.C., Montreal; Hon. F. Peters, Q.C., Charlottetown; Aulay Morrison, New Westminster, B.C.; Dr. R. C. Weldon, Q.C., Halifax; J. A. Gemmill, Ottawa; O. A. Howland, Toronto.

COMMITTEE ON INSOLVENCY AND COMMERCIAL LAW.—F. Arnoldi, Q.C., Toronto; E. V. Bodwell, Victoria; D. Macmaster, Q.C., Montreal; Hon. H. Archambeault, Q.C., Montreal; G. F. Gregory, Q.C., Fredericton; R. L. Borden, Q.C., Halifax.

Resolutions were then passed expressing regret at the absence of Sir Henry Strong, Chief Justice of the Supreme Court, and Judge Baby, late of the Court of Appeals for Quebec; and also congratulations to Sir Henry Strong on his elevation to the Judicial Committee of the Privy Council.

At a meeting of the Council it was resolved that the next annual meeting should be held at Ottawa on or about the 1st May, 1898.

At 3 o'clock the members of the Association attended at the Studley quoit club grounds as guests of the club.

TRANSACTIONS

OF THE

THIRD ANNUAL MEETING

OF THE

CANADIAN BAR ASSOCIATION.

OTTAWA, MAY 18TH AND 19TH, 1898.

The first session of the third annual meeting was opened at 11.15, at the Board of Trade Building. Owing to the absence of the President, the Hon. J. E. Robidoux, Q.C., through illness, Mr. O. A. Howland, Vice-President for Ontario, took the chair.

The following programme was then announced :—

WEDNESDAY, 18TH MAY.

Meeting at Board of Trade Room, Central Chambers, 11 a.m.

1. Reading of Minutes and Reports.
2. Address by the President, Hon. J. E. Robidoux, Q.C.
3. General Business.

3. p.m.—Meeting at Railway Committee Room, House of Commons.

1. Paper by Mr. B. Russell, Q.C., of Halifax. Subject—"The Provisions of the British North America Act for Uniformity of Provincial Laws."
2. Discussion of Paper.
3. General Business.

8 p.m.—Meeting at Railway Committee Room, House of Commons.

1. Paper by Mr. O. A. Howland, of Toronto. Subject—"Constitutional and International Aspects of the Spanish-American War."
2. Discussion of Paper.
3. General Business.

THURSDAY, 19TH MAY.

10 a.m.—Meeting at Board of Trade Rooms.

1. Paper by J. T. Mellish, Charlottetown.
2. General Business.

1. p.m.—Luncheon to visiting members at Hotel Victoria, Aylmer, as guests of the Bar of Ottawa.

The minutes of the last general meeting were read and confirmed, and the Secretary read the report of council, printed as an appendix hereto, which was received and adopted.

The Treasurer then read his report showing a balance on hand of $165.17, to which was to be added $19, received since the closing of his accounts ; this report was received. His report is also printed as an appendix hereto.

Letters were then read from His Excellency the Governor-General and the Premier, Rt. Hon. Sir Wilfrid Laurier, regretting their inability to attend the Association's meetings on account of other engagements.

A Committee was then elected to nominate officers and committees, with instructions to report at a subsequent meeting.

The following resolutions were then carried :—

Resolved: That this Association records its profound regret on account of the death of D'Alton McCarthy, Q.C., M.P., a member of the Executive of the Association, which deprives the profession throughout Canada of one of its most distinguished ornaments, and cuts short a most brilliant public career in the Parliament of our country. That this Association desires the Council to convey to the bereaved family the assurance of the deep sympathy felt by all the members of the Association.

Resolved : That this Association expresses its deep sorrow for the death of Harry Abbott, Q.C., of the Quebec Bar, a member of our Association, who has been taken away in the prime of life.

Several members spoke to both resolutions.

The second session met at 3 p.m. in the Railway Committee Room, House of Commons. Mr. Howland in the chair.

Owing to the fact that several members were necessarily detained by business before the Supreme Court and in the House, the meeting adjourned to 8 p.m.

At 8 p.m. the third session was held at the Railway Committee Rooms. Mr. Howland in the chair.

The meeting was opened by the chairman's calling on Mr. Russell to read a paper written by him on "The Provisions of the British North America Act for uniformity of Provincial Laws." On its conclusion there was a discussion participated in by several members.

Mr. Aulay Morrison, Vice-President for British Columbia, then took the chair and called upon Mr. Howland, who read his paper entitled "Constitutional and International Aspects of the Spanish-American War." As the hour was late discussion of this paper was postponed to next morning's session.

THURSDAY, 19TH MAY, 1898.

The fourth session was held in the Board of Trade Building, at 10 a.m. Mr. Howland in the chair.

Mr. J. E. Farewell, Q.C., of Whitby, was called on and read his paper entitled "Concerning Coroners and Coroners' Inquests." On its conclusion a discussion took place on Mr. Howland's paper of the previous evening, and Mr. Farewell's just read.

Discussion then took place with regard to the printing of the papers.

Finally it was resolved that the executive be recommended to print the proceedings and all papers read, and that the method of distribution be left to the executive. All papers to be subject to revision by their writers.

The nominating committee then presented its report of officers, which was accepted with a few changes. The list of officers finally determined on was as follows, and they were elected unanimously:

HON. PRESIDENT.—Rt. Hon. Sir Wilfrid Laurier, K.C.M.G., P.C., Ottawa.

PRESIDENT.—Æmilius Irving, Q.C., Toronto.

SECRETARY.—A. Falconer, Montreal.

TREASURER.—C. B. Carter, Q.C., Montreal.

VICE-PRESIDENTS.—Hon. J. E. Robidoux, Q.C., Montreal; B. Russell, Q.C., M.P., Halifax; Hon. J. R. Gowan, Q.C., C.M.G., Barrie; G. F. Gregory, Q C., Fredericton; D. A. Mackinnon, Charlottetown; E. V. Bodwell, Victoria; H. J. Macdonald, Q.C., Winnipeg; Hon. J. A. Lougheed, Q.C., Calgary.

COUNCIL. — *Ex-officio* — Hon. David Mills, Q.C., Minister of Justice, Ottawa; Hon. Chas. Fitzpatrick, Q.C., M.P., Sol.-Gen., Ottawa.

Elected.—Hon. Sir C. H. Tupper, Q.C., Victoria; O. A. Howland, Toronto; Wm. Lount, Q.C., Toronto; F. H. Chrysler, Q C., Ottawa; J. E. Farewell, Q.C., Whitby; Matthew Wilson, Q.C., Chatham; D. Macmaster, Q.C., Montreal; F. L. Beique, Q.C., Montreal; Hon. C. A. Geoffrion, Q.C., Montreal; W. C. Languedoc, Q.C., Quebec; Hon. R. Dandurand, Montreal; R. L. Borden, Q.C., Halifax; F. B. Wade, Q.C., Bridgewater; C. S. Harrington, Q.C., Halifax; Hon. L. G. Power, Q.C., Halifax; Hon. Wm. Pugsley, Q.C., St. John, N.B.; C. A. Stockton, St. John, N.B.; Hon. L. H. Davies, Q.C., Ottawa; Hon. A. B. Warburton, Q.C., Charlottetown; W. S. Stewart, Q.C., Charlottetown; J. S. Ewart, Q.C., Winnipeg.

The Nominating Committee then reported names for Special Committees as follows, which were adopted:—

LEGAL EDUCATION.—Æmilius Irving, Q.C., Toronto; A. Globensky, Q.C., Montreal; D. Macmaster, Q.C., Montreal; B. Russell, Q.C., Halifax; J. T. Mellish, Charlottetown.

JURISPRUDENCE AND LAW REFORM.—J. S. Ewart, Q C., Winnipeg; C. B. Carter, Q.C., Montreal; Henry O'Brien, Toronto; H. C. St. Pierre, Q.C., Montreal; Wm. Lount, Q.C., Toronto; A. Drysdale, Q.C., Halifax.

LEGAL PROCEDURE.—H. A. Powell, Q.C., Sackville, N.B.; F. L. Beique, Q.C., Montreal; W. A. O. Morson, Q.C., Charlottetown; Hon. Wm. Pugsley, Q.C., St. John, N.B.; F. H. Chrysler, Q.C., Ottawa; C. S. Harrington, Q.C., Halifax.

INSOLVENCY AND COMMERCIAL LAW.—F. Arnoldi, Q.C., Toronto; E. V. Bodwell, Victoria; D. Macmaster, Q.C., Montreal; Hon. H. Archambeault, Q.C., Montreal; G. F. Gregory, Q.C., Fredericton; R. L. Borden, Q.C., Halifax; J. Parker Thomas, Belleville.

LAW REPORTING.—F. T. Congdon, Halifax; A. J. Trueman, St. John, N.B.; Jas. Kirby, Q.C., Montreal; R. G. Code, Ottawa; D. A. Mackinnon, Charlottetown.

COMPARATIVE LEGISLATION.—B. Russell, Q.C., Halifax; O. A. Howland, Toronto; D. Mullin, St. John, N.B.; D. McNeil, Q.C., Halifax; R. E. Harris, Q.C., Halifax; P. B. Mignault, Q.C., Montreal.

INTERNATIONAL LAW.—Sir C. H. Tupper, Q.C., Victoria; F. L. Beique, Q.C., Montreal; F Peters, Q.C., Victoria; O. A. Howland, Toronto; Aulay Morrison, New Westminster; R. C. Weldon, Q.C., Halifax; J. A. Gemmill, Ottawa.

It was also resolved that the first member named in each case should be Convenor, and should be expected to obtain a report or paper for next meeting from his committee or some member thereof.

On motion of Senator Power, seconded by Mr. Chrysler, it was resolved "that the question of securing improvement in the method of admitting members of the Bar of one province to membership in the Bar of another province be remitted to the committee on Comparative Legislation."

The following resolutions were then carried. *Resolved:* "That the next meeting of the Association be held in Toronto at a date to be fixed by the executive." *Resolved:* "That in the opinion of this Association the time has come for another revision of the Dominion statutes, and that this resolution be communicated to the Honorable the Minister of Justice." Carried without discussion.

The meeting then adjourned to meet in the same place at 4 o'clock.

At the adjournment of the morning meeting cars were in waiting, and the visiting members were conveyed to the Hotel Victoria, Aylmer, where a luncheon was tendered them as guests of the Bar of Ottawa.

The chair was taken by Mr. W. D. Hogg, Q.C., Ottawa, the vice-chairs by Messrs. M. J. Gorman, President of the County of Carleton Law Association, and Mr. F. H. Chrysler, Q C., of Ottawa.

The following is the programme of toasts :—

The Queen and the Governor-General, proposed by the chairman.

The Senate and House of Commons, proposed by the chairman, responded to by Senator Power of Halifax; B. Russell, Q.C., M.P., of Halifax; H. A. Powell, Q.C., M.P., of Sackville, N.B.; N. A. Belcourt, M.P., of Ottawa; and H. J. Logan, M.P., of Amherst, N.S.

The Bench, proposed by Mr. Chrysler and responded to by Judge Lavergne of Aylmer, Que., Judge MacTavish of Ottawa and Judge Mosgrove of Ottawa.

The Canadian Bar Association, proposed by the chairman and responded by Messrs. O. A. Howland, Toronto; G. F. Gregory, Fredericton; Henry O'Brien of Toronto; A. Falconer of Montreal; and D. A. Mackinnon of Charlottetown, P.E.I.

The Bar of Ottawa was then proposed by Mr. Falconer and Mr. Mackinnon, and responded to by Mr. Hogg and Mr. Gorman.

On the return to Ottawa at 6 o'clock from Aylmer of the members of the Association, an adjourned meeting was held at the Board of Trade. Mr. Howland in the chair.

Votes of thanks were passed to the Ottawa Board of Trade, and to the House of Commons for use of rooms for meetings, and to the Bar of Ottawa for their reception of the Association.

A resolution was also passed that the question of the incorporation of the Canadian Bar Association be referred to the favorable consideration of the executive.