Technical and Bibliographic Notes/Notes techniques et bibliographiques

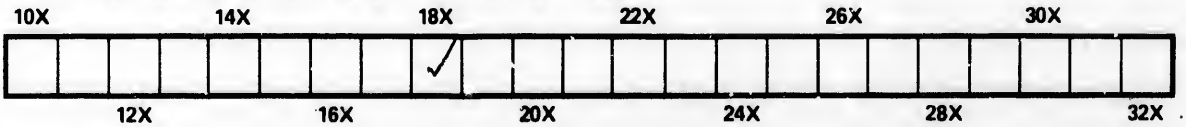
The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

- ☐ Coloured covers/ Couverture de couleur
- ☐ Covers damaged/ Couverture endommagée
- ☐ Covers restored and/or laminated/ Couverture restaurée et/ou pelliculée
- ☐ Cover title missing/ Le titre de couverture manque
- ☐ Coloured maps/ Cartes géographiques en couleur
- ☐ Coloured ink (i.e. other than blue or black)/ Encre de couleur (i.e. autre que bleue ou noire)
- ☐ Coloured plates and/or illustrations/ Planches et/ou illustrations en couleur
- ☐ Bound with other material/ Relié avec d'autres documents
- ☐ Tight binding may cause shadows or distortion along interior margin/ La reliure serrée peut causer de l'ombre ou de la distortion le long de la marge intérieure
- ☐ Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/ Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais. lorsque cela était possible, ces pages n'ont pas été filmées.
- ☐ Additional comments:/ Commentaires supplémentaires:

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- ☐ Coloured pages/ Pages de couleur
- ☐ Pages damaged/ Pages endommagées
- ☐ Pages restored and/or laminated/ Pages restaurées et/ou pelliculées
- ☐ Pages discoloured, stained or foxed/ Pages décolorées, tachetées ou piquées
- ☐ Pages detached/ Pages détachées
- ☐ Showthrough/ Transparence
- ☐ Quality of print varies/ Qualité inégale de l'impression
- ☐ Includes supplementary material/ Comprend du matériel supplémentaire
- ☐ Only edition available/ Seule édition disponible
- ☐ Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image/ Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below/
Ce document est filmé au taux de réduction indiqué ci-dessous.



The copy filmed here has been reproduced thanks to the generosity of:

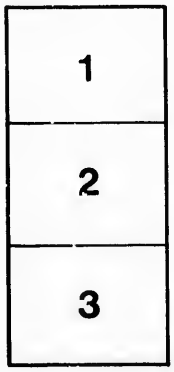
National Library of Canada

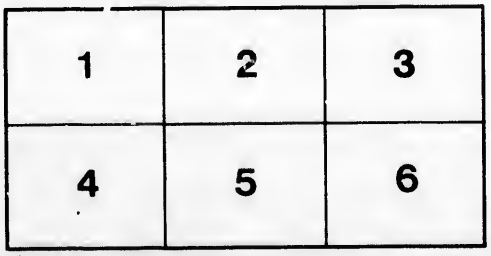
The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol → (meaning "CONTINUED"), or the symbol ∇ (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:





L'exemplaire filmé fut reproduit grâce à la générosité de:

Bibliothèque nationale du Canada

Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole → signifie "A SUIVRE", le symbole ∇ signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.

585

THE MONROE DOCTRINE

AND

OTHER ADDRESSES.

BY

ALFRED A. STOCKTON, LL.D., D. C. L.

ONE OF HER MAJESTY'S COUNSEL; MEMBER OF THE LEGISLATIVE ASSEMBLY OF NEW BRUNSWICK FOR THE CITY OF ST. JOHN; LECTURER ON CONSTITUTIONAL LAW IN THE LAW SCHOOL AT ST. JOHN, N. B., OF THE UNIVERSITY OF KING'S COLLEGE, WINDSOR, N. S.

AUTHOR OF ADMIRALTY REPORTS AND DIGEST; EDITOR OF BERTON'S REPORTS OF THE SUPREME COURT OF NEW BRUNSWICK, ETC.

Contemporanea expositio est optima et fortissima in lege. 2 Inst. 11.

ST. JOHN, N. B.
J. & A. McMillan, 98 Prince William Street.
1898.

PREFACE.

When the addresses contained in this volume were delivered I had no thought that they would ever be published. They were prepared for special occasions; the subjects were assigned by those asking for their preparation and delivery; and the articles as now printed are substantially as delivered. Several friends, to whose judgment I have deferred, suggested that it would be advantageous to put these articles in permanent form, and hence this volume. It is notorious that many people, especially in the United States, have hazy and incorrect views as to what the Monroe Doctrine really is, and by whom originated. The hope is expressed that the article on that subject may at least prove useful in stimulating a desire for full and correct information. I trust the reader may find something in the following pages of interest and profit. My thanks are tendered to Mr. Reginald R. Fairweather, student-at-law, for his kindness in preparing the Index. It will facilitate easy reference to the topics discussed.

A. A. STOCKTON.

ST. JOHN, N. B.
18 Charles Street,
February 8, 1898.

CONTENTS.

I.

THE MONROE DOCTRINE.

AN ADDRESS DELIVERED BEFORE THE FACULTY AND STUDENTS OF THE UNIVERSITY OF NEW BRUNSWICK, AT FREDERICTON, N. B., NOVEMBER 5, 1896.

The seventh annual message of President Monroe, delivered December 2, 1823, contained, among other things, the following declarations:

"At the proposal of the Russian Imperial Government, made through the minister of the Emperor residing here, a full power and instructions have been transmitted to the minister of the United States at St. Petersburg to arrange, by amicable negotiation, the respective rights and interests of the two nations on the northwest coast of this continent. A similar proposal had been made by his Imperial Majesty to the government of Great Britain, which has likewise been acceded to. The government of the United States has been desirous, by this friendly proceeding, of manifesting the great value which they have invariably attached to the friendship of the Emperor, and their solicitude to cultivate the best understanding with his government. In the discussions to which this interest has given rise, and in the arrangements by which

they may terminate, the occasion has been adjudged proper for asserting, as a principle, in which the rights and interests of the United States are involved, that the American continents, by the free and independent condition which they have assumed and maintain, *are henceforth not to be considered as subjects for future colonization by any European powers.*"

"It was stated at the commencement of the last session that a great effort was then making in Spain and Portugal to improve the condition of the people of those countries, and that it appeared to be conducted with extraordinary moderation. It need scarcely be remarked that the result has been, so far, very different from what was then anticipated. Of events in that quarter of the globe, with which we have so much intercourse, and from which we derive our origin, we have always been anxious and interested spectators. The citizens of the United States cherish sentiments the most friendly in favor of the liberty and happiness of their fellow men on that side of the Atlantic. In the wars of the European powers, in matters relating to themselves, we have never taken any part, nor does it comport with our policy to do so. It is only when our rights are invaded or seriously menaced that we resent injuries or make preparations for our defence. With the

movements in this hemisphere we are, of necessity, more immediately connected, and by causes which must be obvious to all enlightened and impartial observers. The political system of the allied powers is essentially different in this respect from that of America. This difference proceeds from that which exists in their respective governments. And to the defense of our own, which has been achieved by the loss of so much blood and treasure, and matured by the wisdom of their most enlightened citizens, and under which we have enjoyed unexampled felicity, this whole nation is devoted. We owe it, therefore, to candor, and to the amicable relations existing between the United States and those powers, to declare that we *should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered, and shall not interfere;* but with the governments who have declared their independence, and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power, in any other light than as the manifestation of

an unfriendly disposition towards the United States. In the war between those new governments and Spain, we declared our neutrality at the time of their recognition; and to this we have adhered, and shall continue to adhere, provided no change shall occur which, in the judgment of the competent authorities of this government, shall make a corresponding change on the part of the United States indispensable to their security. The late events in Spain and Portugal show that Europe is still unsettled. Of this important fact no stronger proof can be adduced than that the allied powers should have thought it proper, on a principle satisfactory to themselves, to have interposed by force in the internal concerns of Spain. To what extent such interposition may be carried, on the same principle, is a question in which all independent powers whose governments differ from their own are interested, even those most remote; and surely none more so than the United States. Our policy in regard to Europe, which was adopted at an early stage of the wars which have so long agitated that quarter of the globe, nevertheless remains the same, which is, not to interfere in the internal concerns of any of its powers; to consider the government *de facto* as the legitimate government for us; to cultivate friendly relations with it, and to

preserve those relations by a frank, firm, and manly policy; meeting, in all instances, the just claims of every power, submitting to injuries from none. *But in regard to these Continents circumstances are eminently and conspicuously different. It is impossible that the Allied Powers should extend their political system to any portion of either continent without endangering our peace and happiness;* nor can any one believe that our Southern brethren, if left to themselves, would adopt it of their own accord. It is equally impossible, therefore, that we should behold such interposition, in any form, with indifference. If we look to the comparative strength and resources of Spain and these new governments, and their distance from each other, it must be obvious that she can never subdue them. It is still the true policy of the United States to leave the parties to themselves, in the hope that other powers will pursue the same course."

The President in the following year—1824—in his annual message, directed attention to the South American difficulties, and the war being waged between Spain and the South American colonies which had thrown off allegiance to the parent state. After adverting to the so called doctrine of the "balance of power," which then so largely entered into the diplomacy of Euro-

pean States, he said: "The balance of power between them, into whichever scale it may turn in its various vibrations, cannot affect us. It is the interest of the United States to preserve the most friendly relations with every power, and on conditions fair, equal, and applicable to all. But in regard to our neighbors our situation is different. It is impossible for European governments to interfere in their concerns, especially in those alluded to, which are vital, without affecting us; indeed, the motive which might induce such interference in the present state of the war between the parties, if a war it may be called, would appear to be equally applicable to us. It is gratifying to know that some of the powers with whom we enjoy a very friendly intercourse, and to whom these views have been communicated, have appeared to acquiesce in them."

I have quoted at length from the President's messages, for the purpose of making as clear as possible their scope and object. For nearly three quarters of a century, in the United States, public policy and political action, have on occasions appealed to the "Monroe Doctrine" for support and vindication. The message of President Cleveland to the Senate of the United States on December 17, 1895, concerning the Venezuelan boundary controversy, has revived

the inquiry as to what the doctrine really is, and by whom originally conceived and formulated. President Cleveland appeals to the authority of the doctrine as a justification for the United States to intervene, even to the extent of armed force, in a dispute between Great Britain and Venezuela as to the true dividing line between the territories of these nations. The letter of Mr. Olney, the Secretary of State, to the American ambassador at London—a copy of which accompanied the President's message—puts forward claims alleged to be founded on this doctrine, which, I venture to think, would startle President Monroe were he alive to read them. To understand intelligently what the doctrine really is, we must remember the historical circumstances which called it forth, and the origin and source of its inspiration. No public utterance of any public man has received more diverse interpretation, or has been more misunderstood by even the majority of the people of the United States, than President Monroe's message of 1823. It will be noticed three subjects are dwelt upon in the message: (1) No further colonization on the part of a European power; (2) no extension of the political system of the Allied Powers to the American continents; and (3) no intervention on the part of a European power in

favor of Spain against the South American Republics. The first and second will be reserved for consideration at the close of this paper; the third will be first considered. As to the general subject, I shall endeavor to prove three things in the course of the discussion: (1) That the doctrine itself, as enunciated and understood by President Monroe and his Cabinet, owes its origin to British statesmanship, to the sagacity and enlightened policy of George Canning; (2) that it has never received the formal sanction of the Congress of the United States; and (3) that it is not a part of international law, binding upon the family of nations. To understand the political events of 1823, we must go back a few years in European history. The fury of the French revolution had spent itself, and the military despotism of the great Napoleon had succeeded the unbridled license of the French democracy. Napoleon's soaring ambition urged him forward to the attainment of universal sovereignty. In the attempted accomplishment of that object, the thrones of Europe tottered, their occupants were expelled, and the vacancies filled by successful generals or relatives of the great conqueror. His career of blood and conquest was stopped by the defeat of Waterloo, and fugitive rulers were thereby restored to their ancestral

crowns. The events, however, which had happened during Napoleon's career made a profound impression upon the crowned heads of Europe. The impression was so great, that the rulers of Continental Europe banded themselves together as the "Holy Alliance," for mutual support in the maintenance of absolute government. From the eventful issue of Waterloo till the delivery of President Monroe's message in 1823, the great powers of Europe had held at least five Congresses for settling European affairs: that of Vienna in 1815; Aix-la-Chapelle in 1818; Troppau in 1820; Laybach in 1821; and Verona in 1822. Successive coalitions of the great European powers had previously been formed against France subsequent to the latter's revolution of 1789. The avowed object of these coalitions was to check the progress of revolutionary principles and practices, and to curb the extension of her military power. The great powers at first composing the coalition were Russia, Prussia, Austria and Great Britain. France gave in her adhesion and became a party at the Congress of Aix-la-Chapelle in 1818. As stated by Mr. Wheaton,[1] the distinguished author of International law, "this union was intended to form a perpetual system of intervention among the European States, adapted to

[1] Wheaton's Int. Law (by Lawrence), p. 120.

prevent any such change in the internal forms of their respective governments, as might endanger the existence of the monarchical institutions which had been re-established under the legitimate dynasties of their respective reigning houses. This general right of interference was sometimes defined so as to be applicable to every case of popular revolution, where the change in the form of government did not proceed from the voluntary concession of the reigning sovereign, or was not confirmed by his sanction, given under such circumstances as to remove all doubt of his having freely consented. At other times, it was extended to every revolutionary movement pronounced by these powers to endanger, in its consequences, immediate or remote, the social order of Europe, or the particular safety of neighboring States." Daniel Webster, in the House of Representatives in January, 1824, on moving his resolution respecting the revolution then existing in Greece, well summarized the aim of the Holy Alliance when he declared[1]: "The end and scope of this amalgamated policy are neither more nor less than this: to interfere, by force, for any government against any people who may resist it. Be the state of the people what it may, they shall not rise; be the gov-

[1] Webster's Great Speeches by Whipple, p. 65.

ernment what it will, it shall not be opposed." The Neapolitan revolution in 1820 so precipitated affairs that Great Britain was forced to dissent from the principles propounded by the Holy Alliance. It could not well be otherwise. A country governed by constitutional forms and methods, gained after many years and centuries of conflict, could not well afford to subordinate those conditions to the dangerous principles of absolute monarchy. Indeed, if the government of Great Britain had been willing to do so, the people behind the government would have refused. And any attempt arbitrarily to commit the nation to such a policy, in defiance of public opinion, would have caused a revolution. The armies of Austria, with unsparing hand, put down the revolution in Naples, and restored the legitimate ruler. The wishes of the people, the aspirations of the country to obtain constitutional government, met with no sympathy at the hands of absolutism. In order to perpetuate absolutism, and to destroy efforts for freedom for all time throughout the world, Russia, Prussia and Austria, at Laybach in 1821, formulated their policy, and issued their circular to the nations, in which were set forth the principles upon which they were prepared to act.

The revolutions in Naples and Piedmont

were occasions for giving practical effect to the principles of the allied powers. Both of these revolutions had been put down by foreign bayonets, and confessedly in opposition to the popular will. The circular declared that "the allied sovereigns could not fail to perceive that there was only one barrier to offer to this devastating torrent. To preserve what is legally established—such, as it ought to be, is the invariable principle of their policy. Useful or necessary changes in legislation and in the administration of States ought only to emanate from the free will and the intelligent and well-weighed conviction of those whom God has rendered responsible for power." This declaration disclosed in all its nakedness the object of absolutism in the formation of the Holy Alliance. The people of any nation were not to have, and under the correct interpretation of such a declaration, could never have any right to reform abuses in government, either in organization or administration. Any concession granted must come spontaneously, as a matter of grace, from "those whom God has rendered responsible for power." This doctrine would grate very harshly on the ears of the British people. Mr. Walpole, in his History,[1] has well said: "The United Kingdom

[1] Vol. 3, p. 25.

was the last country in Europe which would have consented to recognize the novel doctrine. Its whole history, from the days of the Great Charter to the defeat of the government on the reform of the criminal laws, had been one eloquent protest against it." In fact the people of Great Britain took much stronger ground than the government of the day. Great fault was found because British representatives had taken part in the proceedings, both at Troppau and at Laybach. British public opinion insisted that the allied sovereigns had no right to interfere in the internal affairs of an independent and friendly nation. The British government, through Lord Castlereagh, in January, 1821, issued a circular note protesting against the principles of action laid down "as such as could not be safely admitted as a system of international law." The declaration of the allied sovereigns that "useful or necessary changes in legislation and in the administration of States ought only to emanate from the free will and the intelligent and well-weighed conviction of those whom God had rendered responsible for power," necessarily could not find acceptance in Great Britain. It was directly antagonistic to every principle of our constitutional system. Its adoption would ignore the struggles and triumphs in

the motherland on behalf of freedom of government. It would turn backward the dial of popular progress, and rehabilitate the exploded dogmas of the divine rights of kings, and the absolute servility of the nation to the crown. The Great Charter, the Petition of Rights, and the Bill of Rights, would have existed only as idle traditions, and not as living, moulding forces in our system of government. The British government, therefore, had no other course but to protest against the asserted right of one nation to interfere by force in the internal concerns of another nation simply because that other might desire to effect changes of government not in accordance with the principles of absolutism. Naples and Piedmont sought to shake off tyrannical rule, and to introduce popular reforms. But under the sanction of the allied sovereigns, and in accordance with the principles laid down, the aspirations of these peoples were crushed by Austrian bayonets. Webster, in the speech from which I have just quoted, has, with great force, said: "This asserted right of forcible intervention in the affairs of other nations is in open violation of the public law of the world. Who has authorized these learned doctors of Troppau to establish new articles in this code? Whence are their diplomas? Is the whole

world expected to acquiesce in principles which entirely subvert the independence of nations? On the basis of this independence has been reared the beautiful fabric of international law. On the principle of this independence Europe has seen a family of nations flourishing within its limits, the small among the large, protected not always by power, but by a principle above power, by a sense of propriety and justice. On this principle the great commonwealth of civilized states has been hitherto upheld." But "these learned doctors of Troppau," to wit, the allied sovereigns, had determined to disregard the first principles of international law, and to enforce obedience to absolutism in the government of nations. The application of their circular was not to be confined to Naples and Piedmont. Spain had given evidence of a desire for larger liberty, and freer constitutional methods of government. An insurrection had broken out in Spain in 1821; and in response to the popular wish a constitution, fairly liberal in its terms, had been assented to by King Ferdinand. The Holy Alliance saw in this movement a menace to their system. The Congress of Verona was convened in October, 1822, and it was there arranged by Russia, Austria, Prussia and France that the latter nation should invade Spain, with the

avowed object of overthrowing the constitution, and of restoring Ferdinand to the position of an absolute king. The Duke of Wellington represented Great Britain at the Congress of Verona, but he refused to be a party to any such undertaking, and protested on behalf of Great Britain against the introduction of such a principle in the international code. The representative of a nation whose cardinal principles of government are that the people are the origin of power, and that the object of all government is the good of the governed, could not well subscribe to the doctrines set forth in the circular of the Holy Alliance. At this time Mr. Canning was Secretary of State for Foreign Affairs. In accordance with the understanding at Verona, a French army soon after invaded Spain, overthrew the constitution, and restored absolutism. The well known publicist[1] from whom I have already quoted, in respect of this transaction, says: "The British government disclaimed for itself, and denied to other powers, the right of requiring any changes in the internal institutions of independent States, with the menace of hostile attack in case of refusal. It did not consider the Spanish revolution as affording a case of that direct and imminent danger to the safety

[1] Wheaton's Inter. Law, p. 122.

and interests of other States, which might justify a forcible interference. The original alliance between Great Britain and the other principal European powers was specifically designed for the reconquest and liberation of the European continent from the military dominion of France; and having subverted that dominion, it took the state of possession, as established by the peace, under the joint protection of the alliance. It never was, however, intended as an union for the government of the world, or for the superintendence of the internal affairs of other States. No proof had been produced to the British government of any design, on the part of Spain, to invade the territory of France; of any attempt to introduce disaffection among her soldiery; or of any project to undermine her political institutions; and, so long as the struggles and disturbances in Spain should be confined within the circle of her own territory, they could not be admitted by the British government to afford any plea for foreign interference. If the end of the last and the beginning of the present century saw all Europe combined against France, it was not on account of the internal changes which France thought necessary for her own political and civil reformation; but because she attempted to propagate,

first her principles, and afterwards, her dominion, by the sword." While Great Britain protested against the declaration of the Congress of Verona, yet she did not offer any resistance by force of arms to the invasion of Spain by the armies of France. She protested against the principle involved in the act, and rested contented with that. About this time, a further question was beginning to disturb the diplomatic firmament. For some time previously to the Congress of Verona, Spain had lost her grip on her South American colonies. In fact, these colonies had revolted, and had thrown off allegiance to the parent state. The United States had sympathized with them in their efforts for self-government, and, at an early period in their struggle for freedom, had recognized their independence. Mr. Rush, at the time, was Minister from the United States to the Court at London. Twenty years after his return home from his diplomatic mission he published the second volume of his "Residence at the Court at London." His term as minister extended from the years 1817 to 1825, and in this interesting volume he has given us valuable and authentic information as to the part played by Mr. Canning in the relations and negotiations of Great Britain with foreign powers. Happily, Mr. Rush details at length

the confidential conversations and correspondence which took place between himself and Mr. Canning in respect of Spain and her revolted South American colonies. These communications began as early as August, 1823, and resulted at length in President Monroe's declaration as to non-intervention in his message of December of that year. Under date August 23, 1823, Mr. Rush, writing of a letter received from Mr. Canning of the 20th of that month, says[1]: "He asks if the moment has not arrived when our two governments might understand each other as to the Spanish American colonies; and if so, whether it would not be expedient for ourselves, and beneficial for all the world, that our principles in regard to them should be clearly settled and avowed. That as to England she had no disguise on the subject: 1. She conceived the recovery of the colonies by Spain to be hopeless. 2. That the question of their recognition as Independent States was one of time and circumstances. 3. That England was not disposed, however, to throw any impediment in the way of an arrangement between the colonies and the mother country, by amicable negotiation. 4. That she aimed at the possession of no portion of the colonies for herself. 5. That

[1] Rush's Residence at the Court of London, p. 412.

she could not see the transfer of any portion of them to any other power with indifference." The communication of Mr. Canning to Mr. Rush was duly notified by the latter to the then Secretary of State for the United States, John Quincy Adams, by letter of date August 23, 1823. The American Minister, on the 26th of the same month—but three days later—notes in his diary a further communication from the Foreign Secretary, in which the latter says "that England had received notice, though not such as imposed the necessity of instant action, that as soon as the military objects in Spain were achieved, which France expected (how justly he could not determine) to achieve very speedily, a proposal would be made for a congress in Europe, or some other concert, and consultation, specifically on the affairs of Spanish America; and he adds that he need not point out to me the complications to which such a proposal, however dealt with by England, might lead." This was also forwarded to Mr. Adams on the following day. On September 10, Mr. Rush enters in his diary: "Take steps to apprise the deputies of Spanish America in London of the hostile views of France and the continental powers, should the arms of the former succeed in Spain. I make no mention of Mr. Canning's name, or

any allnsion to it, as the source of my information; which information, although it may not be new to the deputies, I impart to put them on their guard." Again, in a dispatch from Mr. Rush to his government, of date September 19, 1823, detailing what took place at a conference between himself and Mr. Canning the previous day, he writes that Mr. Canning, in urging the co-operation of the United States, said the question "was full as much American as European, to say no more. It concerned the United States under aspects and interests as immediate and commanding as it did or could any of the states of Europe. They were the first power established on that continent, and now confessedly the leading power. They were connected with Spanish America by their position, as with Europe by their relations; and they also stood connected with these new states by political relations. Was it possible they could see with indifference their fate decided upon by Europe? Could Europe expect this indifference? Had not a new epoch arrived in the relative position of the United States towards Europe, which Europe must acknowledge? Were the great political and commercial interests, which hung upon the destinies of the new continent, to be canvassed and adjusted in this hemisphere

without the co-operation, or even knowledge, of the United States? Were they to be canvassed and adjusted, he would even add, without some proper understanding between the United States and Great Britain, as the two chief commercial and maritime states of both worlds? He hoped not; he would wish to persuade himself not." Such, says Mr. Rush, was the tenor of Mr. Canning's remarks at that interview. It is evident England's Foreign Secretary, all through the conversations and correspondence, was endeavoring to impress upon the American Minister the urgent importance of actively and vigorously co-operating with Great Britain against the aims of the Holy Alliance in aiding Spain against Spanish America. The correspondence also shows that Mr. Rush was willing to act, but as a condition precedent, he desired Great Britain at once to acknowledge the independence of the newly organized South American Republics. It is also quite evident from the subsequent course of events that Mr. Canning had learned that it was the intention of France, under the support and guidance of the allies, after the overthrow of constitutional government in Spain, and the restoration of Ferdinand to his throne based on absolutism, to aid Spain in subduing her revolted South American colo-

nies. This knowledge it was which induced Mr. Canning to stimulate the American Minister and his government on behalf of these rising Republics. Canning addressed himself to the French Ambassador, Prince de Polignac, and frankly told him that in such a contingency Great Britain would assuredly interfere. And we know well what was the effect produced by Canning's attitude. Mr. Rush[1] frankly says: "That the change in France and her allies was produced by the knowledge that England would oppose at all hazards hostile plans upon Spanish America may be inferred with little danger of error. The certainty of it is, indeed, part of European history at that epoch." He further says as to the course of the United States: "By the early transmission of the proposals made to me by Mr. Canning in his notes of the latter end of August, the copies of them, as well as of my reports of our conference on the whole subject, arrived at Washington in time to engage the deliberations of President Monroe and his cabinet before the meeting of Congress in December." He further says, and this is highly significant: "Although no joint movement took place, my dispatches had distinctly put before our government the intentions of England, with which,

[1] Residence at the Court of London, p. 456.

in the main, our policy harmonized; and President Monroe, in his opening message to Congress, which followed almost immediately afterwards, in December, 1823, put forth the two following declarations." The two declarations were (1) non-intervention, and (2) non-colonization, which have already been stated at length. Mr. Rush says the first was probably expected by England and was well received; the second was unexpected, and not acquiesced in by the British government. In closing his narrative of this interesting diplomatic event, Mr. Rush further says: "It may be inferred that the moral certainty which England derived through my correspondence and conferences with the Foreign Secretary that the United States would, in the end, go hand in hand with her in shielding those new states from European domination, even had the certainty of such a policy in the United States not been otherwise deducible, must have had its natural influence upon England in strengthening her in her line of policy laid down towards France and the Continental Powers."

I have thought it advisable to quote extensively from the man who, at the time, was American Minister in London. We cannot look for information in any direction more

authentic. Mr. Rush's statements fully justify the contention that President Monroe's message against non-interference, at that time, in Spanish American affairs, was inspired by Canning. And this has been the view of leading American statesmen, some of whom were personally cognizant of the facts. When President Monroe received, through Mr. Rush, the proposals of Canning, he communicated with Jefferson and Madison, predecessors in his high office. It was natural that he should seek their advice. They both were men of marked ability, and were well versed in diplomacy. Jefferson, in his letter of reply to the President, dated October 24, 1823, after discussing the position of the allies and their attitude towards the Spanish American colonies, says[1]: "I should think it therefore advisable that the executive should encourage the British government to a continuance in the dispositions expressed in these letters by an assurance of his concurrence with them as far as his authority goes, and that as it may lead to war, the declaration of which requires an act of Congress, the case should be laid before them for consideration at their first meeting, and

[1] Wharton's Dig. Int. Law, vol. 1, p. 269; Tucker's Life of Jefferson, vol. 2, p. 461.

under the reasonable aspect in which it is seen by himself." We have in this reply advice tendered to the President in October to concur in the British proposals, and as following this advice might mean war, the President is further advised to lay the whole case before the next meeting of Congress. The next meeting of Congress was held within six weeks thereafter, and at that meeting the President's message was delivered. Mr. Madison, in his reply, dated October 30, 1823, among other things said: "It cannot be doubted that Mr. Canning's proposal, though made with the air of consultation as well as concert, was founded on a predetermination to take the course marked out, whatever might be the reception given here to his invitation. But this consideration ought not to divert us from what is just and proper in itself. Our co-operation is due to ourselves and to the world, and while it must insure success in the event of our appeal to force, it doubles the chance of success without that appeal." Co-operation with whom? Why, assuredly with Great Britain, in accordance with the proposals of Canning to Rush. No other conclusion can be drawn from the language of the correspondence. In a letter from Jefferson to Madison, November 1, 1823, the former, in giving a summary of his reply

to the President, uses this language:[1] "I have expressed to him my concurrence in the policy of meeting the advances of the British government, having an eye to the forms of our constitution in every step in the road to war. With the British power and navy combined with our own, we have nothing to fear from the rest of the world, and in the great struggle of the epoch between liberty and despotism, we owe it to ourselves to sustain the former, in this hemisphere at least. I have even suggested an invitation to the British government to join in applying the 'small effort for so much good' to the French invasion of Spain, and to make Greece an object of some such favorable attention. Why Mr. Canning and his colleagues did not sooner interpose against the calamity, which could not have escaped foresight, cannot be otherwise explained but by the difficult aspect of the question when it related to liberty in Spain and the extension of British commerce to her former colonies." The suggestion of "meeting the advances of the British government" on the part of the United States, proves that the moving spirit was the British government under the inspiration and guidance of Canning, and that the effort was to get the United States to concur

[1] Wharton's Dig. Int. Law, vol. 1, p. 271.

with Great Britain. Mr. Calhoun was a member of President Monroe's cabinet in 1823, at the time the message was framed and delivered. His statements and opinions, therefore, as to the origin of this so-called "Monroe Doctrine" should necessarily have great weight. He reviewed this whole subject at considerable length in a speech[1] delivered in the United States Senate in 1848, when the proposed occupation of Yucatan was under consideration. Upon that occasion he said: "I remember the reception of the dispatch from Mr. Rush as distinctly as if all the circumstances had occurred yesterday. I well recollect the great satisfaction with which it was received by the cabinet. It came late in the year — not long before the meeting of Congress. As was usual with Mr. Monroe upon great occasions, the papers were sent round to each member of the cabinet, so that each might be duly apprised of all the circumstances, and be prepared to give his opinion. The cabinet met. It deliberated. There was long and careful consultation; and the result was the declaration which I have just announced. All this has passed away. That very movement on the part of England, sustained by this declaration, gave a blow to the celebrated alliance from which it never

[1] Calhoun's Works, vol. 4, p. 454.

recovered. From that time forward it gradually decayed, till it utterly perished." In another part of the same speech[1] Mr. Calhoun, in detailing the history of the transaction leading up to the President's declaration, says that the circumstances show distinctly that the proposals "came through Mr. Rush — originating not with Mr. Adams but Mr. Canning — and were first presented in the form of a proposition from England."

Before I close I shall refer to Mr. Calhoun's statements respecting the clauses of the message relating to non-colonization. What I have quoted refers to non-intervention, and the non-extension of the political system of the allied powers to the American continents. He says the cabinet met and deliberated, and the result of the deliberation was a determination to support England against the allied powers. Great Britain, under Canning's guidance, had protested against the assumed right of one nation to intervene in the internal affairs of another nation, and to settle by force, if necessary, its form of government. Mr. Calhoun states that there was "long and careful consultation" over the dispatch received from Mr. Rush. That dispatch detailed Canning's proposals urging the United States to stand by Great Britain in

[1] p. 462.

resisting the reactionary and autocratic principles of the allied powers. Mr. Calhoun was in a position to know fully the facts whereof he affirmed. He was a prominent member of the cabinet at the time of the "careful consultation" over Mr. Rush's dispatch. His testimony is that of a witness in a position to speak with certainty of knowledge. The conclusion reached was to support England in her movement. The President's declaration contained in his message was the result of that conclusion. Here, then, we have the unanswerable proof that the declaration of Mr. Monroe was inspired by Canning.

But there are other names distinguished in American public life who support the position of Mr. Calhoun. Mr. Sumner,[1] in one of his books, says: "The Monroe Doctrine, as now familiarly called, proceeded from Canning. He was its inventor, promoter, and champion, at least so far as it bears against European intervention in American affairs." And on another page of the same work he says: "At last, after much discussion in the cabinet at Washington, President Monroe, accepting the lead of Mr. Canning, and with the consent of John Quincy Adams, put forth his famous declaration." Mr. Sumner is no mean authority on such a

[1] Prophetic Voices Concerning America, p. 157.

subject as the one now under discussion. His scholarly attainments were of the highest rank; his means of knowledge were ample; and his jealous watchfulness for his country's credit would keep him from making any such admissions unless fully warranted by the facts. He was noted for honesty and fearlessness in the expression of his opinions. In the extracts quoted he gives credit to Canning as the promoter of the doctrine, and asserts that the President's declaration followed the lead of Great Britain's Foreign Secretary. To the list of distinguished Americans, already given, ascribing the parentage of this doctrine to Canning, may be added the names of such noted publicists as President Woolsey, Prof. Woolsey, Von Holst, and others. If we turn to writers of our own country, many prominent ones can be named who support the same view. The name of Dr. Phillimore stands so deservedly high as a jurist and publicist that I feel it important to give a short extract from his great work on International Law.[1] After referring to the reasons which brought about the formation of the Holy Alliance, and the intervention in the affairs of Spain to crush free government and restore absolutism in that country, he says: "Subsequently, under the

[1] Vol. 1, 3 ed., p. 589.

wise and vigorous administration of Mr. Canning, Great Britain protested against any intervention of the European powers in the contest between Spain and her American colonies, declaring that she would consider any such intervention by force or menace as a reason for recognizing the latter without delay, and at the same time the United States of America announced that they would consider any such interference as an unfriendly manifestation towards themselves." A perusal of Stapleton's Life of Canning will fully bear out what I have already claimed for the British statesman. Mr. Stapleton was private secretary to Canning, and was in a position to speak with a degree of certainty. He asserts that while there was no agreement between the two countries,[1] yet it is impossible not to believe but that the correspondence which passed between Mr. Canning and Mr. Rush, mainly encouraged, if it did not originate to the government of the United States, the idea of taking so firm and decisive a tone. He further declares that the language of the President's message was[2] "in a very great degree, if not wholly, the result of Mr. Canning's overture to Rush." Mr. Canning, in a private letter,

[1] Stapleton's Life of Canning, vol. 2, p. 39.
[2] p. 46.

December 21, 1823, to Sir William à Court, who was then British minister to Spain, declared his belief that Mr. Rush's report to his government of the correspondence and conferences between them "had a great share in producing the explicit declaration of the President."[1] And again, in 1826, when Mr. Canning defended his foreign policy, his proud boast was: "I resolved that if France had Spain, it should not be Spain 'with the Indies.' I called the new world into existence to redress the balance of the old."[2] Sir James Mackintosh is also authority for the statement that "the message was influenced by our communications."

I do not deem it necessary further to multiply proofs that this doctrine put forth by President Monroe in 1823, against foreign intervention, emanated from Mr. Canning, and through his influence was adopted by the government of the United States. The proofs given in the preceding pages fully warrant the statement as to Canning's guiding hand. Closely connected with this branch of our subject is a prevalent but erroneous opinion that the doctrine in some way is hostile to all forms of monarchical government on these continents.

[1] Wharton's Int. Law Dig., vol. 1, p. 272.
[2] Stapleton's Life of Canning, vol. 2, p. 39.

The notion obtains largely that the underlying principle of the declaration is that all forms of monarchical government must be swept from these American continents, and that none but republican forms of government are to be tolerated. That is the popular view both in the United States and in some other quarters. But the declaration, and the circumstances of its announcement, do not warrant any such conclusion. The declaration against non-interference only goes to the extent of protesting against a foreign power imposing any form of government upon another country against its will. So far as the declaration goes, any country is at liberty freely to adopt either a republican or monarchical form of government. The opinions of American statesmen and the facts of history amply sustain this view. Dr. Wharton[1] quotes Mr. Seward's correspondence, as Secretary of State, respecting Mexico, to show that all countries should be free to adopt their own form of government. That correspondence covers a period from 1862 to 1866. Mr. Seward says: "It has sometimes been assumed that the Monroe Doctrine contained some declaration against any other than democratic-republican institutions on this continent, however arising or introduced. The message will

[1] Wharton's Int. Law Dig., vol. 1, p. 277.

be searched in vain for anything of the kind. We were first to recognize the imperial authority of Dom Pedro in Brazil, and of Iturbide in Mexico; and more than half the northern continent was under the sceptres of Great Britain and Russia; and these dependencies would certainly be free to adopt what institutions they pleased, in case of successful rebellion, or of peaceful separation from their parent states." Here we have the statement of a Secretary of State, and a very prominent one indeed, that the introduction of republican government into American nations is not what was claimed or aimed at by Mr. Monroe, but entire freedom for every country to choose its own form of government. It is well known that Mr. Seward had strong continental proclivities. Alaska was acquired from Russia chiefly through his instrumentality. It may be he had dreams of the time when the flag of the United States might wave in undisputed sovereignty from ocean to ocean, and from the Gulf of Mexico to the North Pole. But he found nothing in the doctrine hostile to the continuance of Russian and British occupation of a part of the North American continent. If Canada, by peaceful negotiation or successful revolt, separated from the mother country, and sought to erect a monarchical form of govern-

ment, there is nothing in Mr. Monroe's message antagonistic to such a course. Doing so could in no sense be considered by our neighbors to the south of us an act hostile to them, or to any policy outlined in the message. And yet by many it is thought that this doctrine has committed the United States to the policy of driving monarchical institutions from these continents, and of substituting republican forms of government instead. This is a popular delusion, and ought not to exist.

It will now be convenient to discuss that portion of the President's message relating to non-colonization. It is declared "as a principle in which the rights and interests of the United States are involved, that the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European power." This part of the message was intended to meet a difficulty then pending respecting the North-west boundary. Russia, Great Britain and the United States were the nations affected. And in this connection we must not forget that the condition of the continent at the time was far different from what it is at present. Knowledge of its geography was comparatively limited. The great trans-con-

tinental highways had not even been dreamed about. The means of rapid transit and ready interchange of communication were all unknown. The governments of these nations, possibly, had, in many cases, no definite knowledge as to the exact location of the settlements of their people. The paternity of this part of the message belongs to John Quincy Adams. It was never assented to by England, and has received sharp criticism at the hands of leading American statesmen. An American writer[1] in the *North American Review* for April, 1856, says: "We shall endeavor to prove that this doctrine of non-colonization has been greatly misconceived, and therefore perverted from its original meaning, and lastly that even in its authentic form, it has been not only tacitly rejected, but expressly repudiated by the action of Congress." At this time there was a pending controversy between Russia and the United States as to their possessions in America. This controversy, as already stated, was generally known as the North-west boundary dispute. The Russian Emperor, in September, 1821, issued an ukase asserting an exclusive territorial right in Russia to the north-west coast of

[1] 82 North Am. Rev., p. 494; Wharton's Int. Law Dig., vol. 1, p. 283.

America. The extent claimed was[1] "from the northern extremity of the continent to latitude 51°. And by the third article of a convention between the United States and Great Britain, it had been agreed that the question of proprietary right in any country that may be claimed by either party on the north-west coast of America, westward of the stony mountains," should remain in abeyance for ten years without prejudice to the rights of either party. The United States were endeavoring to claim, under treaty with Spain in 1819, the rights that country had pretended to have in respect of the original discovery of America. This position was denied by Great Britain, but the latter country joined with the United States in resisting the claims of Russia. It was in consequence of this state of affairs that Mr. Adams, then Secretary of State, instructed Mr. Rush at London[2] "that the American continents hereafter will no longer be subject to colonization. Occupied by civilized nations, they will be accessible to Europeans and each other on that footing alone; and the Pacific ocean, in every part of it, will remain open to the navigation of all nations in like manner

[1] 82 North Am. Rev., p. 495; see also Wheaton's Int. Law (by Lawrence), p. 307.

[2] Tucker's The Monroe Doctrine, p. 12.

with the Atlantic." Mr. Lawrence distinctly says, in his note to Wheaton, that the part of the message as to non-colonization was made with reference to the discussion then pending with Russia as to the north-west coast of America.[1] The Russian Emperor claimed not only territorial right in the limits above set forth, but claimed a right to prohibit the navigation and fishing of all other nations therein. This branch of the message as to non-colonization could not mean that Great Britain was to hold no colonies thereafter on this continent. It surely was not intended as a notice to quit. Such a declaration as that by the United States to Great Britain would have been tantamount to a declaration of war. As to this phase of the question, Mr. Rush[2] writes in his diary under date January 2, 1824: "Had an interview with Mr. Canning at Gloucester Lodge, at his request. His attack of gout had passed off. The interview was mainly to confer on the subject of the north-west coast. He objected strongly to our claim going as high north as fifty-one, and hoped we would not urge it. He said 'that it was to the *south* of this line that Britain had her dispute with

[1] Wheaton's Int. Law (by Lawrence), p. 124, note. See also Wharton's Int. Law Dig., vol. 1, p. 287.

[2] Residence at the Court of London, p. 470.

Spain' about Nootka Sound. How, therefore, could she now yield this point to the United States? It was a question too important for her to give up. He again hoped we would not urge it." Mr. Rush then goes on to say that the President's message had arrived in London, and that Mr. Canning referred to the statement that the United States would "henceforth object to any of the powers of Europe establishing colonies on either of the continents of America," and desired to know if he had any instructions. Mr. Canning said: "Suppose, for example, that Captain Parry's expedition had ended, or that any new British expedition were to end in the discovery of land proximate to either part of the American continent, north or south, would the United States object to Britain planting a colony there?" The interviews and correspondence show clearly that Great Britain, on all occasions, has declined to be bound by any such interpretation of this clause of the message.

When Mr. Adams became President, and sent a message to the Senate in 1825 as to the appointment of ministers plenipotentiaries for the Panama congress, he sought to explain the meaning of the language of his predecessor in 1823. This is important, when it is borne in mind that Mr. Adams, in 1823, was Secretary

of State, and was the author of the non-colonization clause in Mr. Monroe's message. I quote his language[1]: "An agreement between all the parties represented at the meeting that each will guard, by its own means, against the establishment of *any future* European colony within its borders, may be found advisable. This was more than two years since announced by my predecessor to the world as a principle resulting from the emancipation of both the American continents." There was to be no confederacy to enforce these opinions, but each was to guard by its own means against any future colonization by a European government. The same explanation,[2] a few months later, was given by Mr. Adams by special message to the House of Representatives. It was not intended in any way to affect existing European colonies. But it was intended to prevent the establishment of a colony in any possession, as it might injure the United States in the enjoyment of commercial intercourse with every part of that possession. At this time it is difficult to understand how any such dispute could arise. It would be a violation of the first principles of independent sovereignty for one nation to interfere by way of colonization within the

[1] Tucker's The Monroe Doctrine, p. 27.
[2] Wharton's Int. Law Dig., vol. 1, p. 279.

territorial limits of another. Mr. Monroe's declaration was intended to suit a special case, the extravagant pretentions of Russia as to the north-west coast and the adjacent waters. It did not touch Great Britain under the interpretation, that it was only to apply to future colonization, for she was a colonizer in possession. Again, in 1845 and 1848, President Polk, in his messages of those years, gave substantially the same interpretation to the non-colonization clause. He limited it to future colonization on the part of a European state. He explained[1] that the existing rights of every European nation had to be respected, that the message did not apply to such cases. And Mr. Clay concurred in this view, for he stated[2] that "it was not proposed by that principle to disturb pre-existing European colonies already established in America; the principle looked forward, not backward." This fact is also brought out with great force and prominence by Mr. Calhoun[3] in the speech from which I have already quoted.

I feel it due to the importance of this branch of the subject, so generally misunderstood, to refer at length to Mr. Calhoun's statements,

[1] Jenkins' Life of Polk, p. 184.
[2] Wharton's Int. Law Dig., vol. 1, p. 280.
[3] Calhoun's Works, vol. 4, p. 460.

although at the risk of being considered unnecessarily prolix in quotation. He says: "The word 'colonization' has a specific meaning. It means the establishment of a settlement of emigrants from the parent country in a territory either uninhabited or from which the inhabitants have been partially or wholly expelled. This is not a case of that character. But here it may be proper, in order to understand the force of my argument, to go into a history also of the declaration of Mr. Monroe. It grew out of circumstances altogether different from the other two. At that time there was a question between Great Britain and the United States on the one side, and Russia on the other. All three claimed settlements on the north-west portion of this continent. Great Britain and ourselves having common interests in keeping Russia as far north as possible, the former power applied to the United States for co-operation; and it was in reference to that matter that this additional declaration was made. It was said to be a proper opportunity to make it. It had reference specially to the subject of the north-western settlement, and the other portions of the continent were thrown in, because all the rest of it, with the exception of some settlements in Surinam, Maracaibo, and thereabout, had passed into independent

hands." Mr. Calhoun then goes on to say[1] that this part of the message originated with Mr. Adams, and that it never came before the cabinet for consideration. In this connection he says: "My impression is, that it never became a subject of deliberation in the cabinet. I so stated when the Oregon question was before the Senate. I stated it in order that Mr. Adams might have an opportunity of denying it, or asserting the real state of the facts. He remained silent, and I presume that my statement is correct—that this declaration was inserted after the cabinet deliberation. It originated entirely with Mr. Adams, without being submitted to the cabinet, and it is, in my opinion, owing to this fact that it is not made with the precision and clearness with which the two former are. It declares, without qualification, that these continents have asserted and maintained their freedom and independence, and are no longer subject to colonization by any European power. This is not strictly accurate. Taken as a whole, these continents had not asserted and maintained their freedom and independence. At that period Great Britain had a larger portion of the continent in her possession than the United States. Russia had a considerable portion of it, and other powers

[1] p. 462.

possessed some portions on the southern parts of this continent. The declaration was broader than the fact, and *exhibits precipitancy and want of due reflection.* Besides, there was an impropriety in it when viewed in conjunction with the foregoing declarations. I speak not in the language of censure. We were, as to them, acting in concert with England on a proposition coming from herself — a proposition of the utmost magnitude, and which we felt at the time to be essentially connected with our peace and safety; and of course it was due to propriety as well as policy that this declaration should be strictly in accordance with British feeling." . . . "Now I will venture to say that if that declaration had come before that cautious cabinet — for Mr. Monroe was among the wisest and most cautious men I have ever known — *it would have been modified, and expressed with a far greater degree of precision*, and with much more delicacy in reference to the feelings of the British government." It must not be forgotten that the man who uses this language was a member of Mr. Monroe's cabinet in 1823. He declares that this part of the message relating to non-colonization was never even considered by the cabinet; that its author was Mr. John Quincy Adams, then Secretary of State; that the language lacks precision, is

not in accordance with the then existing facts, and is wanting in that diplomatic courtesy then especially due to Great Britain. This is certainly strong language, and it becomes more emphatic still when uttered by one who was a cabinet minister in 1823, and who must have spoken on the floors of the Senate fully feeling the responsibility of his statements. I leave this part of the subject with a quotation from Justin McCarthy,[1] a writer of acknowledged ability, much research, and judicial fairness. Writing of the action of the United States protesting against the intervention of Louis Napoleon in the affairs of Mexico, he asserts that they "disclaimed any intention to prevent the Mexican people from establishing an empire if they thought fit, but they pointed out that grave inconveniences must arise if a foreign power like France persisted in occupying with her troops any part of the American continent. The Monroe Doctrine, which, by the way, was the invention of George Canning and not President Monroe, does not forbid the establishing of a monarchy on the American continent, but only the intervention of a European power to set up such a system, or any other system opposed to liberty there." This view coincides with the statements I have

[1] History of Our Own Times, vol. 2, p. 222.

already made. And Mr. Seward, as we have seen, officially supports the same view. This naturally brings us to the consideration of the second division of the subject of the message—no extension of the political system of the allied powers to the American continent. Although this part of our discussion is closely identified with the non-colonization clause, yet there are features quite distinct. The "political system" of the allied powers was based on absolutism. The crowned heads composing the Holy Alliance were the originators and supporters of that system. Its basic principle was, that reforms could only emanate from the ruler, not from the people. And bound up in that principle was an understanding or agreement among the allied powers to interfere in the affairs of every nation to repress any attempt on the part of the people to modify or change their system of government. That system would justify the powers supporting it, to aid Spain or any other country to crush the aspirations of the people of any colonial dependencies to become independent sovereign states. And, as I have already pointed out, it was the intention of the allied powers, as soon as France, under their guidance, had crushed the popular movement in Spain, to take steps to restore the latter's authority over the South

American republics. This would be imposing upon those countries by force a system they did not want, and which they could successfully resist against Spain single handed. Great Britain protested against any such attempt on the part of the allied powers, and President Monroe, in his message, stood firmly by England. The term "political system," as used by President Monroe, was not intended by him to mean any particular system or form of government. The message in this regard had no reference to the substitution of republican for monarchical form of government. It was intended to protest against the imposition of a form of government upon a country forcibly, by threat, by arms, against the wishes of the people. Placing Maximilian upon the Mexican throne, and keeping him there by French bayonets, would be a case in point. If the people of Mexico had voluntarily determined their form of government, and had invited Maximilian to be their emperor, there is nothing in Mr. Monroe's message opposed to such a course. The political system of the allied powers, as understood and interpreted by them, was a standing protest against the existence of the United States as a nation. That national existence had been achieved by successful revolution on the part of the people. They had

thrown off allegiance to their ruler, against his will, and the system of the allied powers was intended to prevent any such movement. That system, under the direct sanction of the Russian emperor, left the Greek, struggling for freedom and independence, to the mercy of the ruthless Turk. Well might all countries penetrated with the love of freedom, and governed by constitutional methods, oppose the introduction of such a "political system" into any part of the world.

The declarations of President Monroe's message have never received the formal sanction of the Congress of the United States. A declaration in a Presidential message indicates the policy of the executive branch for the time being, but it has no binding force upon the nation, or upon the future policy of the nation. But it is possible to go further, and say that the Congress of the United States has declined to extend a formal sanction to these particular portions of the message. Mr. Clay, January 20, 1824, sought to obtain the sanction of Congress. He moved a resolution in the House of Representatives, of which at the time he was speaker, "That the people of these states would not see, without serious inquietude, any forcible interposition by the allied powers of Europe, in behalf of Spain, to reduce to their former

subjection those parts of the continent of America which have proclaimed and established for themselves, respectively, independent governments, and which have been solemnly recognized by the United States."[1] This resolution was not even called up for the vote of the House of Representatives, and a somewhat similar resolution of Mr. Poinsett, of South Carolina, met the same fate. The prudent caution of the House would not even commit Congress to an expression of "serious inquietude" against the forcible intervention of the allies on behalf of Spain to reduce to subjection a South American republic whose independence had been acknowledged by the United States. "While, therefore, the 'Monroe Doctrine,' with regard to forcible intervention, was still," as an American writer[2] has forcibly said, "a living question, it failed to meet the sanction of Congress, in whose judgment it seemed at least prudent to delay the adoption of any measures corroborative of the President's suggestions until such intervention had actually taken place. The declaration of the President did not commit the policy of the country to any specific action in the premises. It rested with Congress to give it life and activity, and

[1] Wharton's Int. Law Dig., vol. 1, p. 278.
[2] 82 North Am. Rev., 493.

this Congress declined to do. Upon the wisdom of this decision we do not undertake to pronounce; we merely state the facts for the purpose of drawing the conclusion that this branch of the 'Monroe Doctrine' is not a living and substantive principle of our government policy." The appointment of delegates to the Panama Congress came up in 1826, and a perusal of the history of that incident will show that Congress was careful not to commit itself to any formal sanction of the message of 1823. In 1848, when President Polk sought to obtain such formal sanction in connection with the difficulty in Yucatan, Mr. Calhoun, speaking with all the authority of certain knowledge as an ex-cabinet minister, declared that President Monroe's statements were but mere declarations; that they did not represent the settled policy of the country, and that in the Panama case they were disavowed. Mr. Tucker[1] admits that the doctrine has always failed to secure legislative confirmation, and that "resolution after resolution upon the subject has been before both branches of Congress, only to be withdrawn or to be adversely reported upon by the committee to whom intrusted." And Mr. Wilson, as late as 1850, in a

[1] The Monroe Doctrine, p. 123.

speech[1] in the Senate, said: "Until the Senate and House of Representatives adopt it, I think the less our statesmen at home and diplomatists abroad say about it, in dealing with international questions, the better." Dr. Phillimore[2] says: "I may observe, in passing, that the doctrine contained in it, whatever that may be, has not been corroborated by an act of the legislature of the United States. But the doctrine does not, as has been sometimes supposed, deny the right of European countries to rule their colonies in America, or their right of further colonization in America. It protests against war being waged in America by European powers to preserve the equilibrium of states in Europe." It may then, I think, be considered that the Congress of the United States has never given its formal sanction to any of the declarations of the President's message. Other authorities might be referred to, to the same effect, were it necessary to do so. Very early in the history of that country Washington advised against entering into any "entangling alliances" with foreign countries, and that policy has been quite faithfully followed throughout the history of the great republic. There was a departure in the case of the Clay-

[1] Tucker's The Monroe Doctrine, p. 123.
[2] Int. Law, 3 ed., vol. 1, p. 593.

ton-Bulwer treaty in 1850, arising out of the proposed construction of the inter-oceanic canal across the isthmus; but that is an instance, it is thought, standing alone. But even if Congress had formally sanctioned the declarations of the message, if it had enacted legislation confirming these declarations, that course would not make them binding on any other nation as a rule of international law. The statute law of a country has force within its territorial limits, but not beyond.

In this connection the question very naturally arises, what is international law or the law of nations? For an answer to this question it will be useful to ascertain how eminent writers on this branch of knowledge have defined it. Hooker[1] says: "Now, besides that law, which simply concerneth men as men, and that which belongeth unto them as they are men linked with others in some form of political society, there is a third kind of law which toucheth all such several bodies politic, so far forth as one of them hath public commerce with another. And this third is the *law of nations.*" The phrase "law of nations" is not a very happy one, and is apt to be confused with the "law of nature." Bentham, I believe, can claim the distinction of having first used the better phrase

[1] Ecclesiastical Polity, Bk. 1, c. 10, s. 12.

"international law."[1] And yet that is not scientifically correct, as the word *law* imports a lawgiver, having authority to enforce obedience, which is obviously inapplicable to rules and regulations governing the relations between sovereign states. But for all practical purposes we may use the terms as popularly understood, and ask "what is international law?" Grotius[2] defines it as "jus illud quod inter populos plures aut populorum rectores intercedit, sive ab ipsa natura profectum, aut divinis constitutum legibus, sive moribus et pacto tacito introductum." According to Vattel,[3] "The law of nations is the science which teaches the rights subsisting between nations or states, and the obligations correspondent to those rights." Manning defines it, as used in his work,[4] "as comprising the rules controlling the conduct of independent states in their relations with each other." According to Wheaton,[5] "International law, as understood among civilized nations, may be defined as consisting of those rules of conduct which reason deduces, as consonant to justice, from

[1] See Principles of Morals and Legislation. Clarendon Press, Oxford, 1879, p. 326.

[2] De Jure Belli et Pacis, by Whewell, vol. 1, 1.

[3] Chitty's ed. by Ingraham, 1863, xlix.

[4] Law of Nations, p. 3.

[5] Inter. Law, by Lawrence, p. 26.

the nature of the society existing among independent nations, with such definitions and modifications as may be established by general consent." Prof. Holland,[1] after discussing law as between citizen and citizen, and as between the state and the citizen, says: "But there is a third kind of law which is, for many reasons, convenient to co-ordinate with the two former kinds, although it can be described as law only by courtesy, since the rights with which it is concerned cannot properly be described as legal. It is that body of rules, usually described as international law, which regulates the rights which prevail between state and state." This writer further refers to the term as being convenient to express those rules of conduct in accordance with which, either in consequence of their express consent or in pursuance of the usage of the civilized world, nations are expected to act. President Woolsey[2] says it, "in a wide and abstract sense, would embrace those rules of intercourse between nations which are deduced from their rights and moral claims; or, in other words, it is the expression of the jural and moral relations of states to one another." But he goes on to say[3]: "Coming

[1] Elements of Jurisprudence, 6th ed., p. 116.
[2] Inter. Law, 2nd ed., p. 18.
[3] p. 19.

within narrower limits, we define international law to be the aggregate of the rules which Christian states acknowledge as obligatory in their relations to each other, and to each other's subjects." Prof. Woolsey[1] declares it to be "a collection of rules by which nations, and their members respectively, are supposed to be governed in their relations with each other. In its exact sense, law is a rule of property and of conduct prescribed by sovereign power. Strictly speaking, therefore, as nations have no common superior, they cannot be said to be subject to human law. But there is, nevertheless, a body of rules, more or less generally recognized, by which nations profess to regulate their own conduct towards each other, and the conduct of their citizens respectively. Being rules of property and of conduct, though not prescribed by a superior, they are somewhat loosely designated laws; and, taken together, they form what is called international law." In his recent address before the American Bar Association,[2] Lord Russell of Killowen, the Lord Chief Justice of England, said: "I know no better definition of it than that it is the sum of the rules or usages which civilized states have agreed shall be binding upon them in their

[1] Johnson's Universal Cyclopædia, vol. 4, p. 632.

[2] At Saratoga, August 20, 1896.

dealings with one another." I have purposely quoted the various definitions given of the term "law of nations," or its convertible term "international law," by so many distinguished writers and publicists, to ascertain if by any possibility a declaration of a president, or king, or even a statute of a legislature, could successfully aspire to rank as a rule of international law. It is well understood that a Presidential message[1] is to inform Congress of the state of the nation, and to recommend such action in domestic and foreign relations as may be thought advisable. The responsibility of action remains with Congress. The recommendations of the message may represent executive *policy;* they certainly cannot have any legal force, binding either upon the legislature or the people at large. If a message only represents a policy, and may be followed or repudiated by the government for the time being, it is difficult to understand how any declarations upon which that policy is founded can have force as articles of international law. If all, or a majority of civilized nations assented to any such declaration, and agreed to be bound by it, it would bind those so assenting, but not otherwise. Take any of the definitions given, and can it be successfully said that President Mon-

[1] Cooley's Principles of Constitutional Law, p. 105.

roe's message is binding upon any sovereign state? Mr. Wheaton speaks of rules or usages of international law existing by consent, and Lord Russell follows that view, but expresses it in stronger language. In his definition the rules or usages forming the system of international law must be such as civilized states *have agreed* shall be binding upon them in their dealings and relations with each other. The leading writers and publicists in the United States, in common with those elsewhere, take this view, and deny that Mr. Monroe's declarations have any standing as rules of international law binding on the commonwealth of nations. President Woolsey,[1] on this branch of the case, says: (1) The doctrine is not a national one. The House of Representatives, indeed, had no right to settle questions of policy or of international law. But the cabinet has as little. The opinion of one part of the government neutralized that of another. (2) The principle first mentioned of resisting attempts to overthrow the liberties of the Spanish republics was one of most righteous self-defence and of vital importance. And such it will probably always be regarded if a similar juncture should arise. But the other principle of prohibiting European colonization was vague,

[1] Inter. Law, 2nd ed., p. 67.

and if intended to prevent Russia from stretching her borders on the Pacific further to the south, went far beyond any limit of interference that has hitherto been set up. What right had the United States to control Russia in gaining territory on the Pacific, or planting colonies there, when she had neither territory nor colony to be endangered within thousands of miles." And further[1]: "To lay down the principle that the acquisition of territory on this continent by any European power cannot be allowed by the United States would go far beyond any measures dictated by the system of the balance of power, for the rule of self-preservation is not applicable in our case; we fear no neighbors. lay down the principle that no political systems unlike our own, no change from republican forms to those of monarchy, can be endured in the Americas, would be a step in advance of the congresses at Laybach and Verona, for they apprehended destruction to their political fabrics, and we do not. But to resist attempts of European powers to alter the constitutions of states on this side of the water, is a wise and just opposition to interference. Anything beyond this justifies the system which absolute governments have initiated for the suppression of revolutions by main

[1] p. 70.

force." Prof. Woolsey, in a recent article,[1] ably reviewing adversely President Cleveland's message, says, in speaking of Mr. Monroe's message: "It is not a rule of international law, because it has never been made such by the common consent or agreement of nations." A little consideration must commend these propositions to every reasonable mind. Every state has the undoubted right to protect itself against injury, and against any act on the part of any other state, which it may deem injurious. And the state itself must judge as to the effect of any given course on the part of another state upon its safety and prosperity. A declaration of a sovereign state, protesting against the conduct of another state, or insisting that its conduct is injurious or hostile, may be proper enough on the part of the nation objecting, but it would be a novel doctrine to contend such declaration or protest had the authority of a rule of international law. The admission of such a contention would enable one sovereign state to impose on other sovereign states, against their consent, rules of conduct having the authority of international law. It is only necessary to state the proposition to show its manifest absurdity. Mr. Dana[2] has very care-

[1] The Forum, February, 1896, p. 706.

[2] Dana's Wheaton's Intr. Law, sec. 67, note 36; Wharton's Inter. Law Dig., vol. 1, p. 277.

fully summarized the whole message and his interpretation of it; and, for the sake of clearness, I give his summary:

1. The declarations upon which Mr. Monroe consulted Mr. Jefferson and his cabinet related to the interposition of European powers in the affairs of American states.

2. The kind of interposition declared against was that which may be made for the purpose of controlling their political affairs, or of extending to this hemisphere the system in operation upon the continent of Europe, by which the great powers exercise a control over the affairs of other European states.

3. The declarations do not intimate any course of conduct to be pursued in case of such interpositions, but merely say that they would be "considered as dangerous to our peace and safety," and "as the manifestation of an unfriendly disposition towards the United States," which it would be impossible for us to "behold with indifference," thus leaving the nation to act at all times as its opinion of its policy or duty might require.

4. The declarations are only the opinions of the administration of 1823, and have acquired no legal force or sanction.

5. The United States has never made any

alliance with, or pledge to, any other American state on the subject covered by the declarations.

6. The declarations respecting non-colonization was on a subject distinct from European intervention with American states, and related to the acquisition of sovereign title by any European power by new and original occupation or colonization thereafter. Whatever were the political motives for resisting such colonization, the principle of public law upon which it was placed was that the continent must be considered as already within the occupation and jurisdiction of independent civilized nations.

It may be of interest at this stage to glance at the boundary difficulty between Great Britain and Venezuela; the attitude of the United States towards that controversy; and the arguments employed to bring the dispute within the range of the so-called doctrine. In passing, it is important to note that Mr. Olney, in his letter of instructions of July 20, 1895, to Mr. Bayard, admits that the pronouncement of the doctrine by President Monroe "was unquestionably due to the inspiration of Great Britain, who at once gave it an open and unqualified adhesion which has never been withdrawn."[1]

[1] Document 31, 54th Congress, 1st session, p. 14.

He also admits that the doctrine "has never been formally affirmed by Congress." And in face of these admissions he declares "that the rule thus defined has been the accepted public law of this country ever since its promulgation cannot fairly be denied." It is somewhat difficult to understand how the promulgation of a policy by means of a Presidential message, not affirmed by Congress, can claim to be the accepted public law of the country. The statement is not supported by fact.

For some years a dispute has been pending between Great Britain and Venezuela as to the proper location of the boundary line between the latter country and British Guiana. That controversy has become so acute that diplomatic relations have been suspended between the two countries since 1887. President Cleveland, in his message to the Congress of the United States of December 17, 1895, contends that this dispute in some way affects the well being of his country. He therefore insists that it is covered by the Monroe doctrine, as expounded by him, and that Great Britain must submit the whole subject of controversy to arbitration or run the risk of having a war with the United States. Great Britain maintains that on all points about which there can be any reasonable doubt she is, and always has

been, willing to arbitrate. Some of the claims of Venezuela, she contends, have no foundation whatever, and these Great Britain declines to submit to arbitration. A pretty full history of the dispute may be found in Lord Salisbury's letter of November 26, 1895, to Sir Julian Pauncefote, the British Ambassador at Washington. According to Lord Salisbury the dispute does not ante-date the year 1840. In the latter year Sir Robert Schomburgk was appointed by Great Britain a special commissioner for "provisionally surveying and delimiting the boundaries of British Guiana." Notice of his appointment was given to Venezuela. He made his report, and proposed that Great Britain should consent to surrender her claim to a more "extended frontier inland in return for the formal recognition of her right to Point Barima." And Lord Salisbury states that on this basis Schomburgk drew his line. He further states that "As the progress of settlement by British subjects made a decision of some kind absolutely necessary, and as the Venezuelan government refused to come to any reasonable arrangement, Her Majesty's government decided not to repeat the offer of concessions which had not been reciprocated, but to assert their undoubted right to the territory within the Schomburgk line, while still

consenting to hold open for further negotiation, and even for arbitration, the unsettled lands between that line and what they considered to be the rightful boundary, as stated in the note to Señor Rojaz of the 10th January, 1880." And in October, 1886, failing to get any arrangement, "the Schomburgk line was proclaimed as the irreducible boundary of the colony." Subjects of Great Britain have occupied the territory within the Schomburgk line, and the settlements were made on the well grounded assurance that the territory was British. To admit the claim of Venezuela to the lands within that territory would be handing over British subjects and their property to the care of a Spanish South American republic, whose past history gives no guarantee that either safety of life or property will be assured. President Cleveland attempts to bring the controversy within the non-colonization clause of the message by claiming that the rectification of a boundary line, if decided favorably to Great Britain, is to that extent extending the latter's system of government to these continents. He says[1]: "If a European power, by an extension of its boundaries, takes possession of the territory of one of our neighboring republics against its will and in derogation of its

[1] Document 31, 54 Congress, 1st Sess., p. 2.

rights, it is difficult to see why to that extent such European power does not thereby attempt to extend its system of government to that portion of this continent which is thus taken. This is the precise action which President Monroe declared to be 'dangerous to our peace and safety,' and it can make no difference whether the European system is extended by an advance of frontier or otherwise." Prof. Woolsey has forcibly pointed out in a recent article[1] that under such an interpretation the renunciation of the claims of the United States to territory in the St. John valley, under the Ashburton treaty, was a violation of the Monroe Doctrine. The theory upon which President Cleveland bases his message is, that the extension of Great Britain's system of government over the territory in dispute, in place of that of Venezuela, would in some way menace free republican government, and to that extent endanger the "peace and safety" of the United States. History teaches us that Venezuela has been the theatre of periodic revolutions. Her government is a military dictatorship. Freedom, as understood by us, has no lodgment within her borders. Life and property are certainly not as safe under the government of Venezuela as under British rule. It might

[1] The Forum, February 1896, p. 708.

also be fair to assume that the peace and safety of the United States would be as secure with Great Britain in possession of the disputed territory, as if Venezuela governed it. The boundary line between Canada and the United States extends from ocean to ocean, and in many places the two countries are settled on either side, and the people are living in peace and harmony. British rule and institutions north of the forty-ninth parallel of latitude have not, apparently, proved dangerous to the peace and safety of the republic. No hostile incursion has been made into the territory of that country from Canada. No attempt on the part of Great Britain has been made to menace or subvert its republican form of government. We heartily rejoice in the development and prosperity of our neighbors. Experience is against the assumption that the settlement of a boundary dispute hundreds of miles distant will in any way endanger the United States. The latter nation has no territory on the South American continent, and, if true to Washington's farewell advice, never will have any. It is very difficult, under such circumstances, to understand how the supposed doctrine can be invoked to justify interference in such a controversy. In this connection how true the opinion of Prof. Bryce[1]: "Even now," says

[1] 162 North Am. Rev. (February, 1896), p. 146.

the distinguished author of the 'American Commonwealth,' "after reading what has been said by Mr. Olney and others in America, the Monroe Doctrine, as enunciated by Monroe and expounded by American historians and publicists up till the last few months, seems to have no more application to this particular case than a dogma of theology or a proposition in mathematics." Mr. Olney, in the letter of instructions already referred to, gives a wider interpretation to President Monroe's message than even does President Cleveland. He has even gone beyond any public man in the United States clothed with the responsibility of office. He says, among other things: "To-day the United States is practically sovereign on this continent, and its fiat is law upon the subjects to which it confines its interposition. Why? It is not because of the pure friendship or good will felt for it. It is not simply by reason of its high character as a civilized state, nor because wisdom and justice and equity are the invariable characteristics of the dealings of the United States. It is because, in addition to all other grounds, its infinite resources, combined with its isolated position, render it master of the situation and practically invulnerable as against any or all other powers." The language quoted is from a public dispatch, penned

by a secretary of state, as instructions to an American minister for communication, respecting a controversy pending between two other sovereign nations. If such were not the case, one might be tempted to consider it as chiefly rhetoric, highly colored with patriotic laudation. Are we to understand that because the United States is "master of the situation and practically invulnerable," its fiat in this case is law, and must be so accepted by "all other powers?" If such be the case, why the necessity of any arbitration at all? The whole question can at once be disposed of by the "fiat" of Mr. Olney as the representative of his country, and his fiat once issued supersedes all rules of international law. Such language would come more appropriately from the chancellor of a German or Russian emperor than from the representative of a free republic. Lord Salisbury's position, in his dispatch to the British Minister at Washington, replying to Mr. Olney's letter of instructions, is so appropriate upon this phase of the question that I quote his language. His Lordship says: "In the remarks which I have made, I have argued on the theory that the Monroe Doctrine in itself is sound. I must not, however, be understood as expressing any acceptance of it on the part of Her Majesty's government. It

must always be mentioned with respect, on account of the distinguished statesman to whom it is due, and the great nation who have generally adopted it. But international law is founded on the general consent of nations; and no statesman, however eminent, and no nation, however powerful, are competent to insert into the code of international law a novel principle which was never recognized before, and which has not since been accepted by the government of any other nation.[1]" He freely admits the right of the United States, in common with other nations, to interpose in any controversy which it may think affects its interests, but that right is in no way strengthened or extended because the controversy affects American territory.

President Cleveland, in one part of his message, makes an important admission which largely cuts the ground from under his feet. He says: "Great Britain's present proposition has never thus far been regarded as admissible by Venezuela, *though any adjustment of the boundary which that country may claim for her advantage, and may enter into of her own free will, cannot, of course, be objected to by the United States.*" This clearly abandons the contention put forth as to non-colonization, and the non-

[1] Doc. 31, 54th Congress, 1st session, p. 25.

extension of a European political system to the American continents. Is it true that the acquisition of territory on these continents, on the part of a European power, "by an advance of frontier or otherwise," is dangerous to the peace and safety of the United States? The only logical ground upon which the latter country can maintain her position, either as to non-colonization or the non-extension of a European political system to America, is danger to her peace and safety. The lodgment of a British colony, or its extension by enlargement of boundaries and the consequent establishment of a British political system in South America by the free consent of Venezuela, would be quite as dangerous to the peace and safety of the United States as if Great Britain insisted upon holding the territory she now occupies against the wishes of Venezuela. President Cleveland, however, admits if the territory is acquired by the consent of Venezuela, no objection can be made by the United States. And yet such acquisition, in his opinion, is colonization and extension of a European political system to the extent of the territory thus gained. Such colonization, however, is harmless, according to President Cleveland, if the acquisition is made with the consent of the American nation claiming the disputed terri-

tory. It will be noticed that the "political system" obtains a status, whether established within the territory by consent or otherwise. It is very difficult to understand how the so-called doctrine affects the dispute between Great Britain and Venezuela. But, after all, is the establishment of British rule on any part of the American continents the extension of a purely European political system to those continents? Great Britain cannot be said to be exclusively a European power. One-half of the North American continent and large portions of the South American continent, and many of the islands between, govern themselves under the protection of the British flag. And to the extent indicated Great Britain is an American power, and is deeply interested in the peace and prosperity of the western hemisphere. London is nearer to Canada than is Washington to Alaska and portions of the United States. Inventions and improvements during the last half century have brought the different parts of a nation, and, in fact, the nations themselves, into closer community than ever before. A writer in a leading American law publication[1] very tersely states the position of his country on this question. He says: "The dispute between Great Britain and Vene-

[1] 29 Am. Law Rev., p. 419 (1895).

zuela with regard to the international boundary line between the territories of the two countries, and the recent action of Great Britain in demanding and enforcing the payment of an indemnity by Nicaragua for arresting and banishing the British vice-consul and certain other British subjects at Bluefields, have led to a great deal of inconsiderate talk and bluster in the newspapers of this country concerning what is called the 'Monroe Doctrine.' Very few, even of the editors who have written upon this subject, seem to know what the Monroe Doctrine really is; but most of them seem to think that it is some sort of declaration of our national policy, made by President Monroe, which obliges us to stand at the back of any of the republics of this continent in any dispute with an old world power, no matter what the merits of the dispute may be. Nothing can be further from the facts. The extent of the Monroe Doctrine is that it is the policy of the United States (1) not to interfere in the internal affairs of the governments of the old world; and (2) not to allow these governments to interfere with republics which have been established upon this continent, so far as to suppress their republican institutions, or to attack the integrity of their territory. There was nothing whatever in the Monroe Doctrine

which required President Cleveland to interfere when the British made their demands upon Nicaragua for the payment of an indemnity of fifteen thousand pounds for the imprisonment, maltreatment and banishment of their consular agent and other subjects. Our own citizens have been maltreated by those petty half-civilized governments in a similar way, and we would have acted under similar circumstances as Great Britain did, though possibly without the same commendable vigor and decision." The statements I have made, and the authorities I have quoted, fully support the position claimed in the early part of this paper,[1] viz.: (1) That the doctrine itself, as enunciated and understood by President Monroe, owes its origin to the statesmanship of George Canning; (2) That it has never been formally sanctioned by the Congress of the United States; (3) That it is not a part of international law binding upon nations. In the preparation of this paper I have gleaned from many fields, and have quoted freely and at length from writers and publicists of eminence, rather than give, in many cases, my own interpretation of what they have said or written. Resort has been had especially to the speeches and writings of American statesmen and publicists. The aim has been to allow

[1] Ante, p. 8.

them, in their own language, to say what the doctrine really is. The subject has been much misunderstood on both sides of the line. If any success attend my humble effort to explain this subject, and remove misunderstanding, I shall feel amply repaid for the time and labor bestowed. It is in the nature of things that international difficulties should at times arise, but those difficulties are always capable of satisfactory solution in accordance with the principles of international law, interpreted in a broad, liberal, and Christian spirit. Great Britain and the United States excel all other nations in popular government, freedom, and Christian civilization. It would be a stigma upon their advanced civilization if they allowed the peace of the world to be disturbed over a boundary dispute with a South American republic as to the ownership of a few square miles of territory.

II.

FIFTY YEARS A QUEEN.

AN ADDRESS DELIVERED IN THE EXHIBITION BUILDING, ST. JOHN, N. B., JUNE 20, 1887, HIS WORSHIP MAYOR H. J. THORNE IN THE CHAIR.

An auspicious event calls us together. We are assembled to mingle our congratulations upon the fact that Her Majesty the Queen has completed the fiftieth year of her prosperous reign. This splendid representative assemblage, all alive with patriotic enthusiasm, attests the affection and devotion of our people for the person and throne of Her Most Gracious Majesty. We celebrate on this occasion no ordinary event. From the time of William the Conqueror to the present, only three British sovereigns besides Queen Victoria have attained the jubilee years of their reign. Henry the Third reigned 56 years; Edward the Third, 50 years; and George the Third, the grandfather of the present Queen, 59 years. More than ordinary interest should naturally attach to such an event in the case of any ruler of the empire, and that interest should be specially emphasized in the case of a monarch so distinguished for personal qualities and so unsurpassed in strict adherence to constitutional methods as Queen Victoria.

This is naturally a time for retrospect and comparison. What were we as a nation or as a dependency in 1837? What are we in 1887? In methods of government, in knowledge of arts and science, in material growth, in the conditions of our political and commercial relations with the rest of the world, have we retrograded, have we been stationary, or have we made satisfactory and substantial advance? These are pertinent inquiries—they belong to an occasion such as this, and with your permission I shall attempt to answer some of them. It has truly been said that ours is

> A land of old and fair renown,
> Where freedom broadens slowly down
> From precedent to precedent.

The broadening down process in our history of the last half century has been by no means slow or unsatisfactory. During that period there have been intense activity, keen competition, and abundant success. Material increase, intellectual culture, scientific discovery, the harnessing of nature's forces to mechanical invention for man's convenience and comfort, have had greater development during the Queen's reign than during any one hundred years previously. Amid the exuberant circumstances attendant upon such a celebration as this—the stirring music, the expectant

throng, the sympathetic listener—one is very apt to be tempted into exaggerated laudation. I hope to escape that criticism, and yet I am certain a sober statement of what our nation has done, and its relative position to-day among the nations of the world, must cause satisfaction, admiration and gladness to fill every patriotic heart.

When the Queen ascended the throne her Colonial subjects of European descent were under two millions, now they are nine millions; of Asiatic descent in her Indian empire, 96,000,000, now 254,000,000; and her subjects of other origins in the colonies and dependencies were 2,000,000, now they number 7,000,000. In other words, her Colonial and Indian subjects in 1837 were 100,000,000, now they have increased to the immense proportions of 270,000,000. The material growth of the empire has more than kept pace with the increase of population. Her Majesty's reign has been especially rich in mechanical invention and applied science, in sanitary and economic improvements. The application of steam as a motive power in traversing continents and oceans belongs to the past fifty years, while the practical use of electricity is yet in its infancy. Morse first publicly exhibited his telegraph in 1837; he fyled his caveat for a patent

in that year, but it was not patented till 1840. The telegraph was first brought into practical use in 1844, that being the year the cities of Washington and Baltimore were connected by the electric wire. There was no electric telegraph in use when Victoria began her reign. Twenty years ago there were only about 2,000 miles of submarine cable laid throughout the world; to-day there are 107,000 miles, costing $185,000,000, and all this vast system of submarine cables, with the exception of 7,000 miles, is entirely under British control, and is the result of private enterprise. There are also 1,750,000 miles of land cables in existence to-day, and these have been laid at an estimated cost of $260,000,000. The first telegraphic message sent over the wire in this province was in April, 1851, from Mr. John Wilson, at St. Andrews, to Dr. William Bayard, in St. John. These electric nerve centres have practically annihilated space and brought all parts of the world into close contact. A debate in the imperial parliament any night is the next morning read and discussed at the breakfast table throughout the empire. While the opening of the steam railway, in 1830, between Liverpool and Manchester may be claimed, and rightly so, to have inaugurated the system as a commercial enterprise, yet the development of steam

power by land and sea, for locomotion and for mechanical and industrial pursuits, has taken place during Her Majesty's reign. The first railway company incorporated in this province was the St. Andrews and Quebec Railway, on the 8th March, 1836. It was the only one incorporated in this province prior to the Queen's accession. Since then, especially after 1851, railway incorporation acts strew the pages of our statute book almost as profusely as forest leaves the ground in the late days of autumn. In looking over the names of the incorporators in the early acts, one is struck with the changes time has made. Not one of the incorporators of 1836 is alive now; and in the act of 1851, incorporating the European and North American Railway, but few now survive—our respected Lieutenant Governor, Sir Leonard Tilley,[1] whom we are glad to have with us at this time, is one of the few survivors. As late as 1852, in our own House of Assembly, in a debate on railway resolutions, a prominent representative from Kings County frankly admitted he had never seen a railway. Thirty years ago we had no line of railway into St. John. To-day we have in this province nearly 1,400 miles of railway in operation or under actual construction, intersecting it in all directions. In pro-

[1] Died June 25, 1896.

portion to population. I believe we have a greater railway mileage than any other country in the world. The new lines proposed, many of which are already incorporated, and which their projectors, relying on local and federal subsidies, fully expect to build, will, when completed, about double the mileage we already have.

Fifty years ago a steamship had not crossed the Atlantic. The year 1838 is memorable in history. On the 4th of April of that year the "Sirius" sailed from Cork, and on the 8th of the same month the "Great Western" sailed from Bristol bound for New York. Both vessels reached their port of destination on the 23rd of April—the "Sirius" twelve or fifteen hours in advance of the "Great Western." These were the pioneer steamships to cross the Atlantic ocean. The change since then has been truly marvellous. Magnificent floating palaces, capable of steaming twenty miles an hour—richly freighted with the products of all climes and all lands—carrying tens of thousands of passengers in pursuit of pleasure or gain, are now thickly studding every sea, and are almost hourly arriving at or departing from the great seaports of both continents. This facility of transit and communication has drawn the nations of the world closer together—mul-

tiplied their exchanges of products, and created an inter-dependence and intimate acquaintance far beyond that of any former time. Cowper's lament —

> Lands intersected by a narrow frith
> Abhor each other. Mountains interposed
> Make enemies of nations who had else
> Like kindred drops been mingled into one,

may have been true a century ago, but not so to-day. Enlarged knowledge and easy and frequent intercourse have fostered and stimulated the mercantile spirit of the age, and in that progress no nation has reaped more abundantly than the British empire. A few comparisons will establish my statement. The figures are taken from statistics of the year 1837 and 1885, no later statistics than 1885 being conveniently available.

In the American dependencies the imports have risen from $26,000,000 to $128,500,000; the exports from $25,000,000 to $107,500,000. In the Australasian colonies the imports have risen from $7,500,000 to $317,500,000; exports from $6,500,000 to $260,000,000. In Africa the imports have risen from $10,000,000 to $50,000,000; exports from $7,500,000 to $60,000,000. A large proportion of this colonial trade has been done with the United Kingdom. The total imports and exports are eleven times

greater now than in 1837. British imports to the colonies in 1837 were $56,500,000; in 1885, $272,500,000. British shipping trade with the colonies in 1835 was 3,700,000 tons; in 1885, 56,000,000 tons. In 1885–6 the sea-going registered tonnage of the world was 6½ million tons; and 4½ millions, or more than two-thirds of the whole amount, belonged to the British empire. In view of these expressive figures, we may well exclaim with pardonable pride:

> "Britannia needs no bulwarks,
> No towers along the steep,
> Her march is o'er the mountain waves,
> Her home is on the deep."

I would like to speak of our great progress in the production of books and newspapers and consequent dissemination of knowledge, but time will not permit. I can only glance hastily, and consequently imperfectly, at some of the political problems of the reign. Dark and threatening clouds hung in the political sky when Her Majesty became Queen. Canada was in rebellion, and the Chartist movement in England was not only causing grave apprehension, but had actually broken out into deeds of violence and bloodshed. Lord Durham was sent to Canada to get information and report. It is no exaggeration to say his report is one of the ablest state papers ever written. It grap-

pled with the difficulties in Canada, and it propounded political principles which, since acted upon, have blossomed into representative institutions and responsible government for all the considerable colonies of the empire. Responsible local self-government for the colonies is one of the great facts of Queen Victoria's reign.

The Chartist movement died out. The principles it espoused, viewed from the standpoint of the present, need not have caused any alarm. The charter contained six principal planks—universal suffrage, vote by ballot, annual parliaments, the payment of the members of the House of Commons, the abolition of their property qualification, and equal electoral districts. These are not propositions to frighten people of the present generation. In fact, two of them have already become law in England; three of them fully, and four partially, in Canada. Payment of members of the imperial parliament would not, I think, shake the timber of the old constitution very much. It has worked so well in Canada there is a feeling among some of the recipients that it would add strength and dignity to the constitution to increase the indemnity. The tendency of the past fifty years has been to centre political power in the people. The successive reform bills have given the franchise to hundreds of thous-

ands who were formerly denied it. Formerly the ruling power was found in the House of Lords; to-day that power is decidedly with the Commons. In the first cabinet of George III, thirteen members were in the Lords and only one in the Commons. A cabinet so constructed at the present day could not live a week.

The reform bills of 1867 and 1885 made very large additions to the electoral lists—over two millions—and by that much added to the power of the people. Going back for a little over fifty years, and the list of reforms is a splendid one. Catholic emancipation in 1829; the reform bill of 1832; the repeal of the corn laws, and the navigation acts; the factory laws for the protection of women and children; the reform bills of 1867 and 1885; the disestablishment of the Irish Church; the great advance in a system of national education; the opening of the universities to all classes and creeds; and the reform in the administration of both civil and criminal law, have all, with but two exceptions, taken place since the Queen began her reign.

Unfortunately, there is discontent in Ireland. All attempts thus far have failed to bring content and happiness to that portion of the empire. This is not the place to discuss the Irish question. We all regret the present position

of affairs, knowing well that the English methods of government in the past have not given peace to that unhappy land. Let us earnestly pray that British statesmanship may ere long successfully solve this hitherto apparently insoluble problem in such a manner as to remove all causes of discontent without impairing the integrity of the empire.

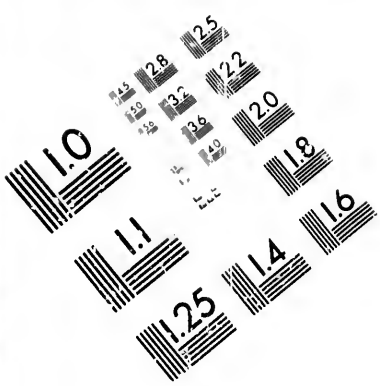
England has had but two wars of any magnitude during the Queen's reign—that with Russia in 1854, and the terrible Indian mutiny in 1857. No great practical advantages came of the Crimean war. It, however, taught our great rival in the east that the men who fought at Inkerman and Balaclava were worthy descendants of the sires who fought on the plains of Abraham and on the field of Waterloo. The lesson may also have indefinitely postponed the appearance of the Russian eagle at the Khyber Pass, and the advent of the Russian iron-clad into the Persian Gulf.

The Indian mutiny will always stand out in ghastly relief. It brought into prominence a splendid array of military chiefs of whom any age or country might well be proud. The political effect was to transfer to the crown the complete government of the country. The East India Company ceased to rule in India. But thirty years have produced a splendid

change for the future peace and prosperity of that extensive portion of the empire. In 1857 the people of India, led by their hereditary princes, were waging a cruel and relentless war to throw off British supremacy; in 1887 only the memory of that terrible crisis remains, while many of the great feudatory princes are now in London pledging fealty to their Empress-Queen and heartily joining in the Jubilee celebrations.

A recent English writer has pointed out somewhat fancifully, but with constitutional accuracy, that the sovereign of the British empire is immortal, infallible and omnipresent! Do not allow yourselves to be startled at these propositions. The sovereign is immortal, as it is a constitutional maxim "the king never dies," the succession is never interrupted; infallible, as under our system of government "the king can do no wrong," there must always be advisers responsible for the acts of the crown; omnipresent, as the Queen in person, or by deputy, is always present in her courts administering justice.

The life of the Queen is not by any means an idle one. It is said she reads all the despatches particularly those relating to foreign affairs, and to the army and navy. Lord Palmerston once lost his post of foreign secre-



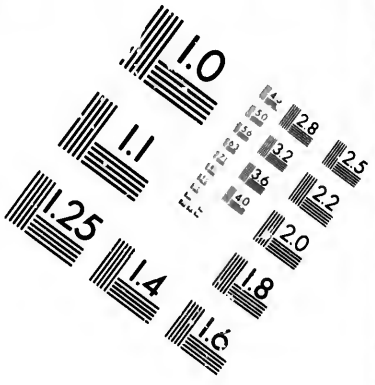
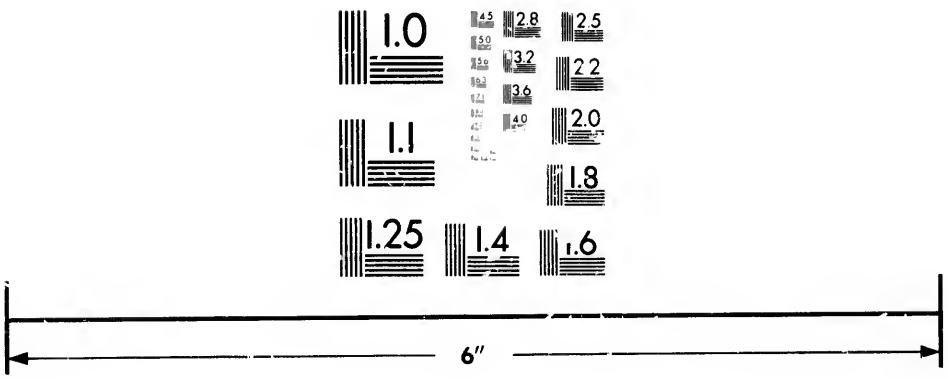
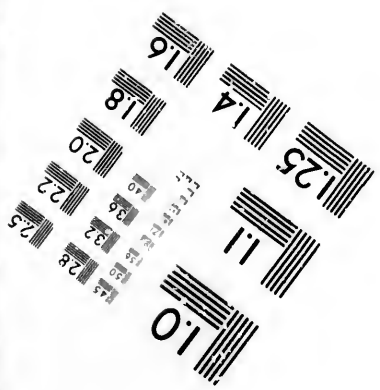
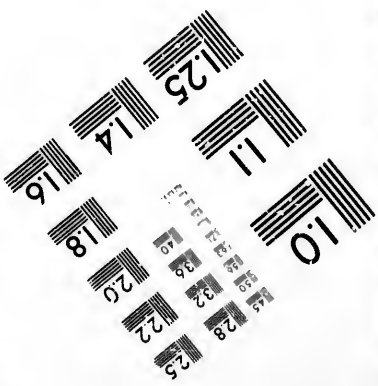


IMAGE EVALUATION TEST TARGET (MT-3)







Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

2.8
2.5
3.2
2.2
3.6
2.0
1.8
1.1
1.0

tary for neglecting to submit a despatch to the Queen before sending it.

It is also a mistake to suppose the Queen has no great powers in the administration of affairs. Those powers are great, although rarely exercised. By virtue of her prerogative, a few years ago she abolished purchase in the army after the Lords had refused to pass a bill for that purpose. She is the fountain of honor, and could, if so disposed, create all her subjects peers of the realm. While she cannot increase her army and navy beyond the limit allowed by parliament, yet she could disband the army and navy altogether. She can declare war and conclude peace without the intervention of parliament. She can veto any bill passed by both houses of parliament. It would be a dangerous exercise of power, and has not been exercised by any British sovereign since the days of Queen Anne. The house of commons can also refuse supplies to the crown, but the right has not been exercised since 1688.

One of the chief glories of Queen Victoria's reign has been her great regard for constitutional government. A slight mistake—natural under the circumstances—was made in the early days of her reign in the case of appointments of officers of her household; but it is now universally admitted the contention of Sir Robert Peel was right.

Much of our political liberty and material prosperity is due to the wise and conscientious discharge of duty on the part of the Queen. Our country has made rapid strides in all that makes a nation great and powerful. Our position is a commanding one among the commonwealth of nations. The achievements of the past are ours. We are "heirs of all the ages" in arts, science and literature. In the great social, intellectual, and material development of the world we have abundantly shared. We can therefore look to the future of our country with hope and confidence. We possess a great advantage over those of 1837. The Victorian age will, in the future, be looked back to as one worthy of emulation. The verdict of history will be that our noble Queen, by her purity of life, by her sympathy with her people, by her active co-operation in all great popular reforms, has added dignity and lustre to the British crown. The flag that floats from yonder flagstaff, in one sense, is nothing but a piece of colored bunting; but in another, and a higher and nobler sense, it is that and very much more. It is the flag of our country. It represents the wealth, the culture, the energy, the power, the Christian civilization of the mightiest empire the world has ever seen. May Queen Victoria long be spared in health and in strength to rule over this extended empire.

III.

SIXTY YEARS A QUEEN.

AN ADDRESS DELIVERED IN THE ST. ANDREW'S RINK, ST. JOHN, N. B., JUNE 19, 1897, HIS WORSHIP MAYOR GEORGE ROBERTSON IN THE CHAIR, THE MEETING CLOSING AT 12 O'CLOCK P. M.

The time at my disposal is very short, and forbids introductory or preliminary remark.[1] When the fifteen or twenty minutes allowed me have elapsed, His Worship the Mayor will be good enough to call me down, and what I may have left unsaid, and it will be much, can in part be said at some other time. When we celebrated in this city, ten years ago, the Jubilee year of Her Majesty's reign, I had the great honor of being one of the speakers. At that time even, it was possible to assert, that through the many centuries of English history, from the earliest periods, only three English sovereigns beside Her Majesty could have celebrated the jubilee years of their reign. If the circumstances ten years ago were important and exceptional, and worthy of patriotic commemoration, the present occasion is still more striking and unique. The Queen completes today sixty years of a prosperous and progressive

[1] The other speakers were His Worship the Mayor, Lieutenant Governor McClelan, J. D. Hazen, Q. C., and J. V. Ellis, M. P.

rule—the longest in the history of our nation; and, so far as I now remember, the longest in the history of any civilized nation, saving the seventy-two years of Louis the Fourteenth. The French king, however, came to the throne when but five years old, and for a considerable period there was a regency. It cannot, therefore, be successfully claimed that he really reigned longer than Queen Victoria. It would be quite impossible at this time to glance even at the many prominent features of the reign. I have accordingly thought it best to direct your attention to a single phase—the great colonial development of the empire during the period under review. This sexagenary is being celebrated throughout the wide bounds of the empire, and it is safe to say that in no portion of that empire is the enthusiasm more genuine, or the loyalty more devoted, than in the colonies.

England, for three centuries past, has been the world's great colonizer. Spain, Portugal, and Holland even, had entered upon successful careers of colonization years before England had a single colony. Through force of circumstances, through the enterprise and daring of their navigators, these nations had acquired the ownership, and had entered into the occupancy of all known territories available

for colonization. The sceptre of colonial pre-eminence has, however, long since been wrested from these nations, and that sceptre is now held by Great Britain. When Sir Francis Drake, in 1588, defeated and scattered the great Armada, he struck the first decisive blow giving England an ascendancy beyond her island home, and at the same time sounded the knell of Spanish decadence. The victory of La Hogue, a century later, decided England's naval supremacy over France—a supremacy which has continued from that time to the present. Only the great Magellan before Drake "put a girdle round the earth," but he died on the voyage. Drake was the first navigator to accomplish the task of penetrating the "mare tenebrosum," of lifting the veil from the "sea of darkness," and sailing round the globe. Prof. Sir John Seeley, in his excellent work "The Growth of British Policy," more than suggests that the victories I have named laid the foundations of our colonial empire and of our naval supremacy. How fitting, then, that the country which produced such men as Drake, Blake, Hawke, Rodney and Nelson, should become the fruitful mother of nations and the proud mistress of the seas. It is no boastful exaggeration to assert that Great Britain, as a naval power, has no equal among

the nations of the world. Her naval supremacy is the basis of her colonial pre-eminence, and her colonial pre-eminence is the pledge and guarantee of her continued naval supremacy.

Three hundred years span the period from Elizabeth to Victoria. Mighty changes have been wrought during the intervening time. It is more than a coincidence that the first substantial beginning towards laying the foundations of our colonial empire was made during the reign of a Queen, the last of the Tudor line; and that the greatest expansion and highest development of that colonial empire have also been attained during the reign of a Queen —the present representative of the House of Brunswick. These are noteworthy facts in connection with the movement to give to women a larger space than heretofore in the political affairs of the country.

The length of the reign we celebrate is important and exceptional, but the vastness and imperial grandeur of the empire are more remarkable than the length of the reign. Scan, if you will, the pages of history, ancient or modern; peer, if you can, through the twilight and beyond, into the regions of pre-historic times, and you get no knowledge of empire so vast, so imperial, so puissant, in arts, in science, in commerce, in government, in all that en-

nobles mankind, and makes a nation great, as we see to-day in connection with the British empire. The forces and resources of nature were never at any former period so fully under man's control as at present; civilization, with all implied in the term, has never before touched so high a level as we see to-day.

When the Queen began her reign her empire contained not more than 125,000,000 of people; now that empire, including protectorates, covers 11,500,000 square miles of the earth's surface, and commands the allegiance of 385,000,000 of people. This marvellous growth may be seen in her tonnage, for that represents the commerce of the nation, and its trade and industrial relations with the rest of the world. In 1837 the empire had something under 2,800,000 tons of shipping; now it has over 10,620,000 tons, or nearly four times as much as sixty years ago. Then the imports into the United Kingdom were £57,230,968 stg.; now £480,604,788 stg. Then the exports from the United Kingdom were £97,621,549 stg.; last year they had risen to £285,094,268 stg. The total trade of the empire in 1896 was: imports, £690,539,806; exports, £499,-126,601. In naming these sums it must not be forgotten that the price level of the world is much lower now than in 1837. But our

attention must be more directly concerned with India and the colonies. Those who were so fortunate as to listen to Joseph Cook in this city some years ago, must have been struck with a remark he made as to India. Discussing with Chunder Sen the possibility of that country again attempting to throw off allegiance to Great Britain, the distinguished East Indian declared to Mr. Cook that "India could not now, if she would, throw off that allegiance, and, twenty-five years hence, she would not if she could." The reason assigned was that, under British rule, the government was mild and free, and security of life and property was amply guaranteed. The peasant who tills the soil feels secure in the possession of his harvest; the merchant who exposes his goods for sale knows that the strong arm of the law will protect him from plunder, and aid him in reaping the legitimate gains of his exchanges. It was not always thus in that portion of the empire. When native princes held sway no class felt safe from their inordinate exactions. The colonies and India, in 1837, had a population of 100,000,000; now fully 308,000,000, or more than three times as many as when the Queen began her reign. Our colonial population, exclusive of India, is 20,000,000 of people.

For the purpose of estimating approximately

the growth and development of our colonial empire, it will be sufficient to take note of the three principal groups: (1) The North American possessions; (2) The Australasian; (3) The South African colonies. The populations of these groups in 1837 were under 2,000,000; now they contain fully 15,000,000 of people. At the beginning of the reign Canada had about 1,400,000; Australia about 340,000; and South Africa 140,000. Each of these groups has to-day over 5,000,000 of people, a very satisfactory increase indeed. The British flag was first raised in Australia as a colony in 1788—less than fifty years before the Queen came to the throne. South Africa has risen into importance during the last twenty-five years. I ask you to look at yonder map.[1] It is well dotted with red, but those red spots are not large enough on the continent of Africa. In the interests of that country, as well as in the interests of civilization, it would be far better if Great Britain ruled that continent.

I do not wish to weary you with figures, but colonial expansion cannot adequately be told without resort to statistics. The present railway mileage of the empire is 75,000 miles. India has 20,000 miles of this, and the colonies

[1] A map of the world, showing the British possessions in red colors, hung at the rear of the platform.

34,000 miles. Of the latter amount Canada has something over 16,000 miles,[1] nearly one-half of the entire railway mileage of the colonies. The same growth may be seen in connection with steamship lines, and telegraph and telephone systems. The telephone was, I believe, first used in Canada. The first telegraphic message was sent over the wire in this province in 1851 to our highly esteemed townsman, Dr. William Bayard, the active and energetic, and, I had almost said, youthful president of our Loyalists' Society.[2] We are all glad to have him on the platform upon this interesting occasion. In 1837 railways, ocean steamships, cables by land and sea, and telephones, were unknown as instruments of transit and ready communication.

An English author of repute, as late as 1846, seriously advised the Imperial government to abandon New South Wales as a penal settlement, and to send transported convicts to

[1] These figures are taken from the Statesman's Year Book of 1897, and they correspond with the figures given in the Statistical Year Book of Canada for 1896, p. 230, since published.

[2] Dr. Bayard is in the eighty-fourth year of his age, and still maintains his foremost position in the active practice of his profession. At the close of the meeting, in a stirring speech, he moved a vote of thanks to the speakers, which was seconded by Judge Forbes.

Canada. The reasons assigned by him for the proposed change were that in New South Wales the penal colony was near the coast, and the chances of escape were therefore easy; but if the convicts were sent several hundreds of miles into the interior of Canada, it would be extremely difficult for them to find their way out, in case of escape. Well, what has been the growth of these confederated colonies which Mr. Porter[1] thought good camping ground for transported convicts? In 1837 their imports were $15,500,000; in 1896, $118,000,000. Their exports then, $9,914,155; now, $121,000,000. Stating the case in another form, the total trade of the provinces now forming the Dominion, in 1837, was under $25,000,000; in 1896, over $239,000,000. Great railway lines now traverse our country, opening up vast tracts of territory to settlement, which, sixty years ago, knew only the Indian and the buffalo. But time forbids further reference to this phase of our subject. The theme is grand and inspiring, and yet we have only touched the fringe of the topics which so naturally, and so eagerly, spring to the lips seeking utterance.

Thus far we have noted national progress and expansion. It is now in order for us to look for a moment at the improved methods

[1] Progress of the Nation, 2nd ed., p. 131.

of government adopted in the colonies during the present reign. This examination involves a survey of the colonial policy of the mother country, and the corresponding political and social development of the colonies. The old colonial policy, especially that of continental Europe, looked upon the colonies as close preserves, to be held for what they were worth to the parent state. The development of the colony, for the benefit of the colony itself, rarely entered into the calculation. Those who left the parent state and migrated to the colony were supposed to have gone to better their fortunes, and they, in many cases, had the intention of returning when fortunes were made. After the American revolution any such policy on the part of Great Britain was wholly abandoned. Sir Robert Peel, as long ago as 1842, said that colonies should, as far as possible, be treated as though they were integral parts of the kingdom. This was before the grant of self-government to the colonies. The effort, especially during the last fifty years, has been to make the colony in methods of government, in social life, and in business and industrial activity, a counterpart of the parent state. This policy has given free scope to the independent activity of the colonies, and has produced the satisfactory results we see to-day.

When the Queen came to the throne there were Chartist riots in England and rebellion in Canada. All questions occasioning those difficulties have been happily settled. The points of the Charter have been substantially granted by the Imperial parliament, except payment of members of the House of Commons; and rebellion in Canada has given place to loyal devotion to the Crown. Wise and prudent statesmanship has accomplished these happy results. How apt the language of the late poet laureate:

> "And statesmen at her councils met
> Who knew the seasons when to take
> Occasion by the hand and make
> The bounds of freedom wider yet."

The reign, considered from the standpoint of constitutional development, may naturally be divided into two parts. The first part ends about the year 1856, and the second extends from that period to the present. In 1837 the territorial and casual revenues of this province were first handed over by the Imperial government to be managed by ourselves, under a legislative agreement that the province should provide a civil list for payment of administrative expenses. The colonies were governed from Downing street through the agency of a Royal governor. That official selected his own

executive council, and that council was not in any way responsible to the people's representatives. The executive council usually was composed of the same members as the legislative council, and in this way the governor and council wielded large administrative and legislative powers, irrespective of the wishes of the elected representatives. This state of affairs was largely responsible for the rebellion in Canada in 1837. Lord Durham was sent to Canada that year to investigate and report. In consequence of misunderstanding with the home government, he returned to England in 1838. His report on the subject of his mission was given to the public in 1839, and in 1840 he died. His almost pathetic statement that posterity would do justice to his memory has been amply vindicated. In his now celebrated report he grappled with the colonial discontents and difficulties. His report was not confined to the solution of the Canadian problem, but to the colonies in general. He laid bare the evils of the system which then prevailed, and sketched with a masterly hand the remedy to be applied. He strongly advocated the introduction of a system of government similar to that then prevailing in England—the responsibility of the ministers of the Crown to the representatives of the people. His recommendation, in

the face of vigorous opposition, finally prevailed, so that by 1856 all the great colonies of the empire were in the enjoyment of responsible government. Since then all these colonies have governed themselves, in accordance with the well understood wishes of the people, subject, of course, to the paramount supremacy of the Crown The evils predicted to follow the introduction of this system of government into the colonies have not come to pass. On the contrary, the benefits have surpassed even the expectations of its most sanguine advocates. The colonies, under this system, have been working out the great problem of self-government in harmony with a central and imperial power. The result thus far has been eminently satisfactory. The attempt at self-government has gone beyond the experimental stage. In no part of the world have the people greater political freedom and personal security than in the self-governing colonies of the British empire. Our political methods are more democratic, more responsive to the popular will, than are those of our neighbors to the south of us. With us a cabinet for continuance in power must depend on the uninterrupted support and favor of the House of Commons; with our neighbors the cabinet depends on the will of the President, quite regardless of the

attitude of the House of Representatives. And it is because of this I claim our system of government, in practical working, is more democratic than that of the United States.

Thirty or forty years ago leading British statesmen seriously discussed the propriety of allowing the colonies to sever the tie of allegiance to the Crown. The theory was put forth that colonial dependencies were a source of weakness to the mother country, and not a bond of strength. These statements, which were avowed with more or less ability and persistency, were not calculated to flatter colonial pride, nor stimulate colonial patriotism. But that condition of affairs has happily ceased to exist. We hear no such expression of opinion now. The old time Manchester and Birmingham school of political thought has closed its doors and gone out of business. Joseph Chamberlain, the radical of former years, has become the powerful exponent and champion of the Imperial idea. The public men of the "little island" range of political vision in the old land have moved off the stage of public life. Great Britain and her colonies stand closer together, and have more in common, than at any past period in their history. And it is right that such should be the case. Inheritors of her institutions, her history, her litera-

ture, her glorious past, we, as colonists, feel an ever-increasing glow of affection for the motherland beyond the sea. The imperial idea is in the air; it has taken hold of the thought of the empire. It acquires strength by lapse of time. Singular would it be if it were otherwise.

"Shall we not through good and ill
Cleave to one another still?
Britain's myriad voices call
'Sons be welded each and all
Into one imperial whole,
One with Britain heart and soul,
One life, one flag, one fleet, one throne.'"

What a splendid spectacle can be witnessed at this very time in London! The capital of the empire is extending hospitality to the great and titled of all lands. Its historic monuments have looked upon many an epoch-making pageant, but upon none more important than the present. The premiers of the colonies, from all climes and from all quarters of the globe, are there, not at the command of military or arbitrary power, but voluntarily, and from a sense of loyal duty, to pay homage and fealty to Her who has so worthily worn the crown, and so wisely ruled our vast empire for full sixty years. Canadians have especial reason to be proud. The "maple leaf" has been assigned the place of honor. Amid the coro-

nets of the titled and the glittering emblems of princely lineage, no one among the throng receives greater honor, or attracts more attention, than WILFRID LAURIER, the prime minister of Canada.[1] We all, irrespective of party politics, send our thanks across the sea for the honor thus conferred upon Canada in the person of her premier; and we all join in the prayer for the continued health of Her Majesty, and the ever-increasing prosperity of the empire.

[1] Now, by reason of honors conferred at the time, the Right Hon. Sir Wilfrid Laurier, G. C. M. G., etc.

IV.

AIM OF LEGISLATION; MATERIAL DEVELOPMENT OR MORAL IMPROVEMENT?

AN ADDRESS DELIVERED BEFORE THE FACULTY AND STUDENTS OF THE UNIVERSITY OF NEW BRUNSWICK, AT FREDERICTON, N. B., MARCH 12, 1895.

Some months ago Professor Davidson extracted a promise from me to be one of the lecturers in this year's course. I am here this evening in fulfilment of that promise. I desire in the first place to assure my young friends of the University that it gives me very great pleasure, at all times, to be instrumental in advancing, even in an humble way, the educational and intellectual life of our Province. I still cherish vivid and pleasant recollections of my own student life at Mount Allison University, and I sincerely trust I may never forget how to appreciate and enter into the feelings and aspirations of those pursuing undergraduate courses of study. The subject for consideration this evening is "The Aim of Legislation—Material Development or Moral Improvement?" The theme for discussion was selected for the speaker; it was not his own choosing. And yet if I had selected a topic

for discussion, it would have been difficult to have chosen one more appropriate or more practical. After engaging for several weeks in the active work of legislation[1], what more profitable or interesting than to turn aside for an hour or so, amid the quiet of these Academic halls, to discuss the theory of legislation — the aims sought and the objects to be attained? Many of you, no doubt, have listened from the galleries of the Parliament building to earnest and warm discussion upon the various subjects which, during the session just closed, have engaged the attention of the collected legislative wisdom of our Province. In many instances you may have felt that the search was not singly after truth as revealed by unclouded reason. You may have thought that the quest for reaching correct conclusion was occasionally hindered by desire for party advantage. Within the halls of such an institution as this we meet to discuss questions without bias, without party predilections; and with, let us hope, a sincere desire to know the truth. The range of the University curriculum is now broader and more comprehensive than it was a half, or even a quarter of a century ago. The necessities of the age require that such should be the case. We study the present as

[1] The Legislative Assembly was prorogued, March 5, 1895.

well as the past. It is as important, that every liberally educated person should understand the scope and limitations of his country's institutions, as that he should possess a critical knowledge of the political functions of the Amphictyonic League or the Achaian Assembly. In saying this, no reflection is intended to be cast upon classical culture; on the contrary, I desire to emphasize the desirability of its attainment.

Civilization is a development, a growth; it is not a manufacture. The progress of development is well marked, from hunter and herdsman to husbandman and artificer. By no process of rapid evolution can the nomad of yesterday be transformed into the *bull* or *bear* of the stock market of to-day. In the hunter state men are scattered; they subsist by the chase, and require but few rules and laws to govern their intercourse with each other. The patriarchs of old were the law givers to those under their control. The legislative, judicial and executive functions were all centred in them. In those days the family was the unit in the state. When property accumulated, when men became tillers of the soil and ceased nomadic life, when the individual became the unit in the state or community, the need of protection to life and property became appar-

ent. I am not called upon at this time to discuss and define the terms "society" and "state," and the many and various theories as to their origin; "whether spontaneous or miraculous, whether by divine agency or by a social compact." Speaking generally, there are two views as to the origin of society. Aristotle and those who think with him contend it arose by nature, while Hobbes and his school hold it arose from compact. It is not necessary to detain you to consider either theory. It is quite sufficient to know that society exists, that people are living together in communities, and that laws or regulations are imperatively required to control and govern. At this stage the question naturally arises: What is law? By this I mean the rule or regulation society sets for itself in the government of the varied relations of its members. Professor Sidgwick, in a recent work[1] following Austin, says: "A law, in the more general sense, may be defined as a command to do or abstain from doing a certain class of acts issued by a determinate person or body of persons acting as a body, and involving the announcement, express or tacit, of a penalty to be inflicted on any persons who may disobey the commands, it being assumed that the individual

[1] Elements of Politics, p. 16.

or body announcing the penalty has the power and purpose of inflicting it. Such commands, when issued directly or indirectly by the sovereign of the community to which the command is addressed, are positive laws in the strictest sense." Blackstone defines municipal law as "a rule of civil conduct prescribed by the supreme power in the state, commanding what is right and prohibiting what is wrong." Chancellor Kent declares it to be a "rule of civil conduct prescribed by the supreme power of a state."

It is not necessary to remind you that unwritten preceded written laws. The former, however, were none the less binding because unwritten. Laws in a country may exist and possess authority from usage, religious observances, decisions of courts, writings of those skilled in the science, and from legislation. "Statute law," says Kent, "is the express written will of the legislature, rendered authentic by certain prescribed forms and solemnities." The great body of laws in every civilized country to-day is the statute law, that law ordained by the sovereign legislative authority of a country. The different legislative bodies throughout the world are annually busily engaged putting upon the statute book laws having for their objects the attainment of all sorts

and conditions of things. The opening up of a country to settlement, the bridging of rivers and streams, the construction of railroads, the incorporation of companies for educational, religious, and commercial purposes, sanitary laws, compelling the observance of rules relating to health and preventing the spread of disease, and numerous other objects are continually claiming legislative intervention. My subject requires that I give some idea of the aim of all this legislation, or rather what ought to be its aim. What principle, what motive, should underlie legislative enactment? The principles of morals and legislation were discussed with great force and acuteness by Jeremy Bentham more than a century ago; and since his day many eminent writers have traversed the same domain of investigation with greater or less exhaustiveness. Bentham grounds his views upon the principle of utility. He defines the principle of utility to be "that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question; or what is the same thing in other words, to promote or oppose that happiness."[1] He applies this principle to

[1] Principles of Morals and Legislation, Clarendon Press, Oxford, 1879, p. 2.

every action whatsoever, not alone every action of a private individual, but likewise every measure of government. By utility he means "that property in any object whereby it tends to produce benefit, advantage, pleasure, good, or happiness;" or its converse, "to prevent the happening of mischief, pain, evil, or unhappiness to the party whose interest is concerned; if that party be the community in general, then the happiness of the community; if a particular individual, then the happiness of that individual."[1] It may therefore be deduced from Bentham's theory of legislation that the great primary object of the legislature should be to enact laws tending to promote happiness, or to avert its opposite. Mr. Justice Markby,[2] in a recent work, is by no means optimistic as to the power of legislation to secure happiness. He says: "If instead of saying that we ought not to take utility as our guide in legislation, it were said that legislation, even with utility for its guide, is, after all, but a feeble instrument of happiness, I should be much more inclined to agree. I take it, however, that this is not because we have chosen the wrong principle to guide us in legislation, but because legislation can never, under any cir-

[1] id, p. 2.

[2] Elements of Law, Clarendon Press, 4 ed., p. 33.

cumstances, be a potent instrument for happiness. Nearly all the lawgiver can do is to remove impediments to people procuring happiness for themselves, and to secure them from being disturbed in the enjoyment of it." All law is coercive, restraining, or organizing. Hobbes declares that "law was brought into the world for nothing else but to limit the natural liberty of particular men, in such manner as they might not hurt, but assist one another, and join together against a common enemy." Kant defines the object of law as "The totality of the conditions under which the free will of one man can be united with the free will of another in accordance with a general law of freedom." Locke states that "the end of the law is not to abolish or restrain, but to preserve or enlarge freedom." No doubt the ultimate object of every law should be the highest well-being of society. I cite the statements of these great thinkers in these departments of human study and activity, hoping that you may thereby be induced to peruse their pages at first hand and for yourselves.

Instead of dwelling upon the abstract requisites of legislation, I prefer, for obvious and practical purposes, to point out what has been accomplished by legislation, and from these instances draw conclusions as to the aim and

scope of legislation in general. The ultimate aim of legislation should not only be the highest well being of society as it at present exists, but it should also project beyond the present, so as to conserve the well being of posterity. "What need I care for posterity; it has done nothing for me?" is the idle or jocular remark we often hear. If the affairs of the world were really conducted on that principle, the results would indeed be disastrous. Under such circumstances we would have no interest in the prosecution of enterprises extending beyond the limited horizon of our own little lives. The great projects for the settlement and civilization of continents, the expansion of commerce, and the establishment of noble charities, would remain as idle dreams. Sordid selfishness would naturally rule the race. We are reaping to-day largely from the sowing of past years. Take our own province as an illustration. The great majority of those who, fifty years ago, planned for the progress and well-being of this province, have passed from the stage of life. Their works, however, remain. And it was intended by those who made our laws, felled our forests, and rendered the conditions of life enjoyable, that their works should follow them, as a benefit to those succeeding. In this age of the world wealth has so largely

increased, resources of all kinds under new conditions have been so greatly developed, intercommunication has been rendered so easy, and the social, political and commercial relations men sustain to each other are so complicated, that there must be laws, regulations, in short, legislation, to direct and protect those complicated conditions and relations. If it had not been for the fostering and protecting influence of law, wealth would not have so accumulated, and our resources would not have been so developed. The first great object to engage the state's attention is to secure absolute security for person and property. People dwelling within our borders must have the assurance that their lives and their property are safe under the law. If the state is unable to give such assurance, the thrifty will go where such security can be had. Thrift, accumulation, capital, labor, shrink from every appearance of lawlessness, or weakness in administration of law. The laws of a country must not only impose sanctions for the security of life and property, but to be efficacious there must be power behind them to enforce, if necessary, their proper observance. The absolute necessity for these conditions can be seen to-day in some despotic eastern countries. Take Egypt as an example. The natural resources

of that country properly developed and protected would efficiently maintain the public services and keep the people in comparative comfort. The population, if free, would become industrious and thrifty. But such has not been the result in Egypt. The people are down-trodden, they are not very secure in their personal liberty, and they are robbed by the tax gatherer for so-called state purposes. In consequence of this unfavorable condition, the people refuse in large measure to cultivate the land and to engage in other productive pursuits, as they have no guarantee that they will be allowed to enjoy the fruits of their labors. The evils endured by the people of that country have been greatly mitigated of late years through the agency of British influence. This sense of insecurity paralyzes the arm of industry, and destroys the spirit of enterprise. But while freedom of person and security of property are absolutely indispensable to the greatest individual and public prosperity, there are some modifying limitations to this statement. Let us look at this phase of the subject from the standpoint of material development in the light of modern legislation. Circumstances may, and in fact do, frequently arise, where the interests of the individual and the state—the public at large—become antago-

nistic. The individual is now the unit, and the aggregate of units composes the community or state. While the individual is deeply interested in the prosperity of the state, that interest is reciprocal, as the state is also interested in the welfare of the individual. The state—the aggregate of units—must seek to promote the general welfare, but in doing so the rights of the individual may have to give way for the general good. The proposition in more popular phrase is that private rights must give way to the public good. In this sense then, under existing theories and practice of legislation, we hold our property as trustees for the public welfare. While the state guarantees us personal liberty, and freedom of speech and action, there is the implied condition that we must not in the exercise of that liberty interfere with the liberty and rights of others.

A great many notions formerly held as to the sacredness of private property have been rudely shocked by modern legislation. A man's house is said to be his castle; and in a sense that is quite correct. The Queen has no right to enter without his permission and against his will. But the exigencies of modern improvement and enterprise have in many cases induced the legislature to grant corporate

powers under the authority of which a man's dwelling may be completely obliterated. The exercise of such authority under legislative sanction became especially prominent forty or fifty years ago in England when the railway companies were constructing their lines of railway. We are also quite familiar with the exercise of such power in this country since the beginning of the construction of railways. The doctrine of *eminent domain*[1] is one with which the legal profession is familiar. It is the right or power of a sovereign state to appropriate private property to particular uses for the purpose of promoting the general welfare. It embraces all cases where, by authority of the state and for the public good, the property of the individual is taken without his consent for the purpose of being devoted to some particular use, either by the state itself or by a corporation, public or private, or by a private citizen. Judge Cooley[2] says: "It is the rightful authority which exists in every sovereignty to control and regulate these rights of a public nature which pertain to its citizens in common, and to appropriate and control individual property for the public benefit as the public safety, necessity, convenience, or

[1] See Lewis on Eminent Domain, p. 1.

[2] Constitutional Limitations, 5th ed., p. 649.

welfare may demand." We hold our lands subject to this implied right of expropriation. And this power to expropriate is now fully granted by the legislature on the theory that it is in the public interests. This right at first was sparingly given, but the principle has become so firmly established in our legislation that expropriation acts are of frequent occurrence. It may with great apparent strength of reason be asked, what right has a private corporation to run a line of railway through my garden, or it may be over the site of my house? The power to exercise this right is given to every railway company receiving corporate power from the legislature. Upon what basis of reason does it rest? The theory is that the exercise of the power increases the material development of the country, adds to its resources, and is so important in the public interests that rights of private property must give way to the paramount interests of the general public. Of late years we have seen the application of this principle of legislation carried far beyond the power of expropriation contained in railway charters. The grant of such power in connection with railway legislation was supported on the ground that railway construction, although promoted by a private company, was nevertheless a *quasi* pub-

lic undertaking and for the public good. It will be noted that by such process of reasoning the expropriation of private property is justified and defended on the result, on the object to be attained, on the general purposes of the undertaking. But in theory and in fact the right to take rests upon the broad ground that private rights must not stand in the way of general progress. One of the great striking facts of modern times is the joint stock company. Individual efforts generally cannot accomplish great public enterprises for lack of sufficient capital. But this inability on the part of the individual is surmounted by the capital of the many brought into a common treasury by means of the joint stock company. The company with its massed capital can easily enter upon the prosecution and completion of enterprises beyond the reach or means of the individual. The enterprises have mainly had for their accomplishment great undertakings for the public benefit, and have been considered as *quasi* public in their scope and purpose, although in the hands of private corporations. They have been fostered and subsidized by legislation, and have no doubt, in many cases, contributed in large measure to the material progress of the locality in which the corporations do business or carry on their works.

Let us consider some instances found in our own provincial statute book outside of railway legislation. All the cases I shall mention had for their object the material and sanitary improvement of the community. Take water and gas companies as examples. In these cases the companies, for purposes of making dividends for the shareholders, have prosecuted their works and have supplied the public with gas and water, and in return for their proposed services, have received legislative authority to dig up streets and highways, cross private property; and upon payment of compensation have been authorized to take the property of others compulsorily in order the better to carry on their works. All this is justified on the ground of public convenience and necessity. During the last session[1] of the legislature we incorporated a company with authority to open coal mines, construct a railway, erect smelting works with power to acquire compulsorily private property even for the site of the smelting buildings. The grant of such large and exceptional power to a private company engaged in mercantile and manufacturing pursuits in the ordinary way of trade, is, it must be admitted, a very distinct enlargement of the principle we are considering. The same prin-

[1] Acts of Assembly, 58 Vic., c. 79.

ciple was involved in another law authorizing a private company to acquire private lands for a public park. The latter case on its face presented stronger reasons for the grant of the right than in the case of the coal company. In the session of 1894 the legislature authorized a cemetery company[1] to expropriate a portion of the farm of an adjoining owner for cemetery purposes. It is scarcely necessary to add that the power to take compulsorily is only exercised after failure to agree for private purchase, and compensation is given for the value of the property taken.

Now, if you consider for a moment, the instances given, you will notice the principle of utility, suggested by Bentham, is not absent. The prosecution of these undertakings would promote the happiness or convenience of at least a part of the public. The material resources of the country in some of the cases would be increased; in others, the sanitary and health-promoting conditions of the people would be conserved. Such considerations, no doubt, move the legislature in granting such wide powers. All laws relating to the settlement of our public lands, the construction and repair of our roads and bridges, the improvement of the navigation of our rivers and

[1] 57 Vic., c. 80.

streams, the aid we give to agriculture, and the encouragement extended to mining and lumbering industries, have for their aims and purpose the increase of wealth and the improvement of the condition of the people.

All legislation should seek to have a free man in a free state. The necessity for individual freedom of action has already been pointed out. This right to individual freedom of action is, however, limited by the wise restriction that the exercise of the freedom must not interfere with the rights of others. This is substantially the position taken by Hobbes, and is supposed to run through all intelligent legislation. In fact there would be no freedom at all if every person did as he pleased regardless of the rights of others. Society, under such conditions would sink into barbarism, and might, not right, would prevail. General anarchy would be the result. But legislation goes even beyond protecting man against the aggressions of his fellows, it seeks to protect him against himself. It does this upon well founded principles of public policy. Man finds himself a member of society. He is one of the units which make up the aggregate. The highest and best possible development of the separate units must necessarily benefit the aggregate. This shows us how the state has

a deep interest in the individual, in his power as a wealth producer, as a contributor to the public treasury, as a force against ignorance and crime. This theory justifies the enactment of laws to repress the liquor traffic. If you admit that the use of intoxicants lessens the producing power of the wage-earner, that it has a tendency to produce pauperism and crime the logical conclusion must follow, that society—the state—has an undoubted right to protect itself against the evil. Legislation upon this subject is in reality an attempt to protect the individual and society against injury. In more euphemistic phrase, and to be strictly within constitutional limits, we say it is raising a revenue for civic or municipal purposes. We justify the maintenance of our public school system on the same theory. Intelligence, sobriety, capacity to discharge the duties of citizenship properly, ability to add to the general wealth, are important factors in building up a free and progressive state. We, therefore, by legislative enactment declare that the property of the whole community must contribute to place within the reach of every child the means of acquiring an education. As the state benefits by the intelligence and character of its citizens, the property within it must, in part at least, bear the burden of

securing these qualities of citizenship. Taxation for public schools is better than for prisons and reformatories. The legislature of every enlightened country acts on this principle. But, we know, the objection is made that those having property and no children to educate should not be compelled to part with a portion of their property annually to educate other people's children. The state by its legislation declares that "no man liveth unto himself alone," all citizens should be intelligent, and as that condition benefits the entire community, so the property of the community must contribute to that end. The logical conclusion from this argument is, that as facilities for educating all are provided by general taxation, the state should go a step further and insist that every child receive more or less instruction. This question will no doubt at no distant date require the best consideration of the legislature. The individual, by law, as we have seen is protected against himself. He is also prevented from committing acts or pursuing courses of conduct injurious to the state. Legislation demanding pure foods, limited hours of labor for women and children, the protection of workmen against dangerous machinery may be classed in the first division. This species of legislation not only interferes

with freedom of action, but it also interferes with freedom of contract. A man may be willing to take all risks against which these laws provide, but the legislature decides and judges for him. Look at the recent Factory Acts in England relating to women and children. They limit the hours of labor and the conditions upon which the labor is to be performed. The beneficent provisions of these acts have since been extended to the children of the agricultural districts. In these laws a limit is placed upon the greed of the manufacturer and landlord. Those employed cannot by voluntary contract escape the terms of the law. For many years we have had strict laws for the protection of our sailors. These classes are looked upon as wards of the public. The legislature assumes that they need protection, and unless protected by stringent laws that they will be injured in their lives. The necessities of poverty stricken women and children have frequently goaded them to work beyond their strength. This is not only injurious to the present generation, but also to the future generations, and the legislature wisely declares that these classes must be protected, and that the race must be saved from deterioration. Another branch of the subject is the protection of the public against the indi-

vidual. Laws relating to public health, the prevention of contagious diseases and kindred subjects come under this head. We restrain all acts of the individual calculated to imperil the public health. A home containing a case of contagious disease, under the authority of laws relating to the public health, is at once placarded and put under control of the proper officers. The health officer, with impunity, under such circumstances, invades the owner's castle, and the owner is compelled to take all needed precautions to protect his neighbor and the public. Even in the construction of dwellings in large centres of population the legislature prescribes the requisites for sewerage and plumbing. A very important case, bearing on this branch of our subject, was quite recently decided by the New York Court of Appeals. A law was enacted requiring the owners of tenement houses to provide for a supply of water on every floor. A church corporation, owning tenement houses in New York city, refused to comply with the provisions of the law as they were required to do by the Board of Health. The refusal rendered the corporation liable to a fine, and the litigation in question arose over its collection. The defendants, among other defences, denied the constitutionality of the law, and lengthy

arguments were had upon this view of the case. The Court of Appeals in delivering judgment, said: "We think that in this case it is not a mere matter of convenience of the tenants as to where they shall obtain their supply of water. Simple convenience, we admit, would not authorize the passage of this kind of legislation. But where it is obvious that without the convenience of an appliance for the supply of water on the various floors of their tenement houses, there will be scarcely any but the most limited and scanty use of the water itself, which must be carried from the yards below, and where we must admit that the free use of water tends directly and immediately towards the sustaining of the health of the individual and the prevention of disease arising from filth, either of the person, or in the surrounding habitation, then we must conclude that it is more than a mere matter of convenience in the use of water which is involved in the decision in this case. The absence of the water tends directly towards the breeding of disease, and its presence is healthful and humanizing." You will notice the court in this case bases its judgment not upon convenience, but upon the broader ground of individual cleanliness as a protection against disease and in favor of decency and humanity.

Thus far I have said nothing in respect of the criminal laws of a country. A very distinguished writer[1] has said that the main object of legislation is to protect the innocent against the guilty. This is a very sweeping generalization, but in a sense it contains a large measure of truth. Criminal laws are for the protection of lawlessness and the repression of crime. Their sanctions are intended to deter from the commission of offences rather than to punish offences. Another field of fruitful inquiry is how far legislation should seek to educate people in morality, or to suppress teachings and opinions likely to corrupt good morals and injure the state. A man may sincerely hold opinions as to the proper forms of government, social duties, and religious life and duties connected therewith at variance with the generally accepted views. It is no part of the duty of a state to teach dogmatic theology; that work properly belongs to the different churches. And yet the tendency of legislation should be in favor of morality and orderly conduct. It may be urged that the expression of particular views is injurious or dangerous to society or the state, and therefore should be suppressed. It was upon such reasoning that freedom of

[1] Buckle's History of Civilization, Vol. 1, p. 23. Rose-Bedford Pub. Co., 1878.

religious opinion was formerly repressed, and freedom of public discussion in the press or on the platform denied. Our country has happily outgrown these views. While opinions may be deemed heterodox in both church and state we have learned that the repression of opinion or discussion will lead to graver evils than those sought to be avoided by means of restriction. While we admit all this, legislation at all hazards must protect the public against crime, immorality and those practices injurious to the community, or to the individual. Legislation should not be in advance, or much in advance of public opinion. It is supposed to embody the collected sense of the community at the time of its enactment. There are occasions, however, when the leaders of men must act in the interest of the state, although public opinion may be adverse. They must trust to the possibility of subsequently educating public opinion up to the required standard. Laws are placed on the statute book for a purpose. They should be obeyed. One of the most unfortunate and demoralizing things which can happen a community is to have a law violated with impunity. Disregard of a particular law in time begets disregard and want of respect for all law. To clearly understand the history of a country, its intellectual life and

social growth, we must consult its statute book. The historian who neglects this will fail to grasp intelligently the many and varied phases through which a country has passed in building up its material prosperity, and in developing its intellectual and social conditions. While wealth cannot be created by Act of Parliament, yet wise legislation may guide and intensify the efforts of a community in the pursuit of material growth, commercial expansion, and social progress. Our systems of public education, our encouragement to agriculture, our aid to the construction of public works so as to render transit easy, all testify in favor of this view. It is the duty of the legislator to study well the conditions of the country for which he legislates, and to do that which at the time appears to be in the best interests of the public. Changing conditions may require change of method. Political science is by no means an exact science. Mr. Buckle[1], a brilliant writer and a most industrious collector of facts, in one of his generalizations, says: "Politics so far from being a science is one of the most backward of all the arts; and the only safe course for the legislator is to look upon his craft as consisting in the adaptation of temporary contrivances to temporary emerg-

[1] History of Civilization, Vol. 1, p. 504.

encies. His business is to follow the age, and not at all to attempt to lead it. He should be satisfied with studying what is passing around him; and should modify his schemes, not according to the notions he has inherited from his fathers, but according to the actual exigencies of his own time. For he may rely upon it that the movements of society have now become so rapid that the wants of one generation are no measure of the wants of another." These are words worthy of attentive study. Intelligently following them, in the actual work of legislation, would enure to the benefit of the state. But you must not infer from the language of Mr. Buckle that he favors political opportunism. He does nothing of the kind. Political opportunists care but little for the public weal. They fasten themselves upon a political party—almost always the party in power—not through any patriotic purpose, but to advance their personal interests.

From what has thus far been stated, it must be evident that a legislator should possess a large and varied fund of knowledge. As stated by Aristotle,[1] in addition to this practical wisdom, "he ought to perceive what laws are best, and what are most suitable to each particular government; for all laws ought to be

[1] Politics, Bk. 4, c. 1, Bohn's ed.

framed, and are framed by all men, with reference to the state, and not the state with reference to the laws. For government is a certain ordering in a state, which respects the magistrates as to the manner in which they are regulated, where the supreme power shall be placed, and what is the final object which each community shall have in view. . . . And hence it is evident that the founders of laws should attend to the different kinds and to the number of governments; for it is impossible that the same laws should be fitted to all sorts of oligarchies and democracies; for of both these governments there are many species, and not one only." Plato[1] placed a high ideal before those preparing to become legislators. He would keep them till they were fifty years of age in active and earnest preparation for this highest of work. "Then, as soon as they are fifty years old, those who have passed safely through all temptations, and who have won every distinction in every branch, whether of action or of science, must be forthwith introduced to their final task, and must be constrained to lift up the eye of the soul and fix it upon that which gives light to all things; and having surveyed the essence of good, they must take

[1] Republic, Bk. 7, translation by Davies and Vaughan, 1874, p. 268.

it as a pattern to be copied in that work of regulating their country and their fellow-citizens and themselves, which is to occupy each in turn during the rest of life; and though they are to pass most of their time in philosophical pursuits, yet each, when his turn comes, is to devote himself to the hard duties of public life, and hold office for their country's sake, not as a desirable, but as an unavoidable occupation, and thus having trained up a constant supply of others like themselves to fill their places as guardians of the state, they will depart and take up their abode in the islands of the blessed. And the state will put up monuments to their memory at the public expense." These are high standards of attainment, and if all, ambitious of becoming law-makers, were compelled to meet these requirements, the numbers seeking such distinction might possibly be considerably smaller than at present. Professor Lorimer[1] contends that we can only legislate correctly when we do so in accordance with the law of nature. In his view the legislator ought to have knowledge of the laws of nature, and that such knowledge is as necessary to him as knowledge of the laws of the land to one placed on the bench to administer law. "That the errors of our legislation do

[1] Institutes of Law, p. 193.

in practice arise from mistaken or imperfect conceptions of the objects which legislation ought to seek, quite as frequently as of the means by which its objects are to be attained, is a fact which will become apparent more and more as we compare the objects of positive laws with the objects of natural laws; and there is, moreover, this very important difference between these two sources of error, that whereas a law which employs inadequate means calls only for amendment, a law which aims at a false object demands immediate repeal. When the legislative engine is set on the right rails and turned in the right direction, all that is requisite is that the greatest amount of speed should be attained that is consistent with safety. But if it is on the wrong line, or has run off the rails, the journey will never be accomplished, and damage to life and property increases every instant that the engine continues in motion." We must not, however, forget that Herbert Spencer[1] is not so highly impressed with the legislator as a factor in the development of a state as some of the writers I have already named. He thinks we are too apt to forget the social forces at work in producing the beneficent results already attained. He de-

[1] Justice: The Limits of State-duties, Appleton & Co., 1891, p. 247.

clares that when the legislator "asks how the surface of the earth has been cleared and made fertile, how towns have grown up, how manufactures of all kinds have arisen, how the arts have been developed, how knowledge has been accumulated, how literature has been produced, he is forced to recognize the fact that none of these are of governmental origin, but how many of them suffered from governmental obstruction; yet, ignoring all this, he assumes that if a good is to be achieved or an evil prevented, parliament must be invoked. He has unlimited faith in the agency which has achieved multitudinous failures, and has no faith in the agency which has achieved multitudinous successes."

In conclusion, I think we can all agree that the legislator should have an intelligent knowledge of his own country at the very least. A wider knowledge, enabling him to compare different political systems with his own, would add to his legislative usefulness. The aim of legislation should be to promote both material development and moral improvement. The legislator should have extensive knowledge of the material resources of his country. He should seek to know the best means of developing those resources. He also should have faith in the possibilities of his country, and his

effort should be to give to that country an intelligent and law-abiding citizenship. Legislation promoted on such conditions would elevate all the concerns of state, and from it would flow the happiest results.

V.

THE OBJECT OF LAW, AS RELATED TO THE STATE AND THE INDIVIDUAL.

AN ADDRESS DELIVERED IN THE UNIVERSITY EXTENSION COURSE, ST. JOHN, N. B., FEBRUARY 14, 1892.

From the very interesting and instructive lectures of my predecessor, the Recorder,[1] you have heard something of the origin of law, the sources whence derived, and the development of the various systems in different ages to meet the requirements of social conditions and advancing civilization. It now becomes my duty to speak to you on the object of law, its relation to society and the individual; its enforcement; the security of life and property as dependent upon its proper and expeditious administration; and such other topics as naturally grow out of the discussion of these subjects. Emerson, in one of his essays, gives a good definition of law, taken from the Hindoo scriptures: "Law it is which is without name or color or hands or feet; which is smallest of the least, and largest of the large; all and knowing all things; which hears without ears,

[1] I. Allen Jack, D. C. L., Q. C.

sees without eyes, moves without feet, and seizes without hands." This is a very good definition, especially as seen in a well governed state. Its all pervasive influence is exerted throughout the community without notice, and without so much as giving any indication of its presence until some violation of its provisions takes place. Then its existence is soon apparent, and the offender learns that he cannot ignore its rules with impunity. The dictum of Herbert Spencer that "law embodies the dictates of the dead to the living" is just and forcibly put. My remarks in this discourse must be understood as limited to human laws —laws made by men for their own guidance and government. In the early times there were no distinctions between human and divine laws. In fact all laws originally were supposed to have come down to mankind from a divine source, and their observance was based on a duty to the gods; their non-observance entailed not only punishment from man, but merited the anger of the gods. Grote points out that among the Greeks there was no Greek word for human laws. The Romans supposed that their laws had been received by Numa from the goddess Egeria. But as trade and commerce increased, as intercourse between peoples of different cities and distant lands became

more frequent, as the necessities of a growing civilization in the different communities of the same nation even indicated the impossibility of social existence without defined rules to regulate the conduct of persons and property, a distinction gradually arose between the divine and human laws; those regulating the conscience, and those regulating the status of citizen and the acquisition and transfer of property. It is quite easy to understand that laws suitable for one stage of social development might be inadequate for a totally different stage or condition. The object of human law is to govern the relations between individuals as members of society, to preserve to each the right of person and property, and in this way to stimulate individuals to exertion in the acquisition of property and the improvement of their social condition. I do not claim for a country possessing a wise system of jurisprudence pre-eminent superiority over one not so fortunately situated. A modern writer[1] has well said: "In various departments of intellectual exertion—in philosophy, poetry, oratory and the fine arts—the Greeks have never been surpassed. But they contributed almost nothing to the science of jurisprudence. In speculative philosophy they greatly excelled the

[1] Mackenzie, Roman Law, p. 1.

Romans; but in the cultivation of law, the Romans carried off the palm from all the nations of antiquity." The country, however, possessing a good system of law, and ample machinery to put it in force, with ability and inclination to preserve to every person the lawful acquisitions arising from brain or hand, will excel in every development worthy of social and national life a community or state not so happily situated. How could there be national progress in a state where the husbandman, the artisan, or the worker in any department of production was in momentary dread of being despoiled of his just acquisitions by some roving bandit? We have abundant evidence of this disastrous effect upon thrift in countries incapable or unwilling to protect life and property. The soil may be fertile, the climate all that is desirable, the results of well directed labor abundant, and yet the people are far from prosperous in consequence of the lawless, distracted state of the country. The husbandman, the merchant, the wage earner, will not devote brain and energy to their respective pursuits if there is no assurance of reaping the legitimate reward. The true object of law should primarily be to protect all in the enjoyment of security of personal freedom and the undisturbed possession of lawful gain. Only under

such social conditions will there be substantial advancement in intellectual and material growth.

It is the proud boast of all countries governed by English law that much of their rapid growth in intelligence, political freedom, and expanding wealth, is largely due to the laws under which they live. This statement applies to Great Britain, her English speaking colonies, and the United States. The common law of England, which has grown with the centuries, is much different from the laws of continental Europe. We have grown to our present stature under the common law; the rest of the world, outside of the English speaking portions of it, under what is known as the civil law. Our nation from early times clung to the principles and procedure of the common law, and sturdily resisted the introduction of the study of the civil law. A recent writer[1] declares that "our language, and the main outlines of our political and judicial institutions, are all inherited from our Teutonic ancestors." This view is also strongly held by Mr. Justice Holmes[2] even with reference to the law of bailments. In discussing the analogies between the English and early German laws as to bailment, he says:

[1] Taswell-Langmead, Eng. Con. Hist., 4 ed., p. 4.
[2] The Common Law, p. 196.

"Lord Holt's famous opinion in the latter case[1] quotes largely from the Roman law as it filtered to him through Bracton; but, whatever influence that may have had upon his general views, the point decided and the distinctions touching common carriers were of English growth." King Alfred conquered all his competitors for power in England, and subsequently codified the laws of the whole country, and in consequence has been called the great founder of the English law. This does not mean that "those laws were first made in his time, for there were Saxon laws then in being, which had been made for above three hundred years before his reign; but the meaning was this only, that he, being the first sole monarch after the Heptarchy, collected the substance of the laws of all former Saxon kings, from Æthelbert to his time, who were kings only of parts of the land, into one body, and so formed one entire codex or book of laws." Sir John Fortescue was Chief Justice and Lord Chancellor in the time of Henry VI. In addition to his book "De Laudibus Legum Angliæ," he left in manuscript, now in the Bodleian Library, Oxford, a dissertation upon the English constitution. That dissertation was published, "with remarks," in 1714, by John Fortescue-Aland,

[1] Coggs *vs.* Bernard, 2 Ld. Raym., 909.

and in his preface, from which I have quoted, he traces the origin and development of the system of our common law.[1] Writing further of King Alfred's laws, he says[2]: "Now this codex, being made up of such a variety of different laws, enacted by the several Saxon kings, reigning over distinct parts of the kingdom; and these several laws, which then affected only parts of the English nation, being now reduced into one body, and made to extend equally to the whole nation, it was very proper to call it the Common Law of England, because those laws were now first of all made common to the whole English nation." And from this it follows, as rightly claimed by writers of authority, that the English Constitution is part of the common law. The late Dr. Hearn, Chancellor of the University of Melbourne, in his excellent work,[3] expresses in felicitous language the fond preference of our Saxon forefathers for their system of laws. "It is not easy," he says, "for us, so altered are our circumstances, to enter into the feelings with which our ancestors regarded the Common Law. To them those 'ancient judgments

[1] Fortescue's Monarchy and English Constitution, by Fortescue-Aland, London, 1714, p. xviii.

[2] p. xix.

[3] The Government of England, 2 ed., p. 35.

of the just'[1] represented the immemorial customs of their race, the old familiar principles under which they and their fathers had lived, and by which their property and their security were assured, this traditionary law was rendered still dearer to them by the subtle innovations both of the Norman lawyers in favor of the crown, and of the canonists in favor of the church. On the one side the forest laws, or the laws of the court of chivalry or other peculiar courts, infringed upon the free customs of the land; on the other side the church unceasingly strove to extend its own system, and to introduce into general practice the doctrines of the civil law. But however willing the elder jurists of our country were to derive reflected light from Roman jurisprudence, they knew too well the political tendencies of the lawyers of the Antonines and of the codes of Theodosius and Justinian to admit for an instant the binding authority of that legislation. The unlearned but free born tenants of the crown had no idea of submitting to a heavier yoke than their fathers were accustomed to bear; and in their general contentment with the present, and their ignorance of the cause of their comparative prosperity, resolutely resisted every change. Thus we find the English,

[1] Bracton.

when oppressed by Norman exactions, clamoring for the restoration of the good laws of King Edward. Thus we find the sturdy refusal of the barons at Merton to permit, on a question of status, the laws of England to be changed. Thus we know that in the times of the Third Edward and of his grandson the addition of a new law was regarded as a matter of the gravest nature, not to be lightly asked or heedlessly granted. At a still later period, the language of our lawyers towards their loved jurisprudence breathes a spirit of the deepest reverence and of the tenderest affection." At a later stage of this paper I will consider the hostility of our ancestors to the doctrines of the civil law. We divide our laws primarily into two divisions, the *lex non scripta* and the *lex scripta*. The unwritten laws are those which compose what we call the *common law*. The written laws are the statutes passed by the appropriate legislative authority. The theory is, however, that all laws, both the written and the unwritten, have originally emanated from the same source—the legislature. But, by lapse of time, many of the records relating to these old laws have been lost, and by the statute of Westminster the limitation of a writ of right was settled and fixed at the beginning of the reign of Richard the First, *i. e.*, A. D. 1189.

The common law, then, is the body of the statute law of the kingdom, passed before the time of memory; the statute law, that passed within or since the time of memory, or since 1189. Hence we have the statement of Hale[1] "that these statutes or acts of parliament that were made before the beginning of the reign of Richard the First, and have not since been repealed or altered, either by contrary usage or by subsequent acts of parliament, are now accounted part of the *lex non scripta*, being, as it were, incorporated therewith, and become a part of the common law; and in truth such statutes are not now pleadable as acts of parliament, because what is *before* time of memory is supposed without a beginning, or at least such a beginning as the law takes notice of, but they obtain their strength by mere immemorial usage or custom." The common law, therefore, may be said to have been the common sense of the country in adjusting disputes, interpreting contracts, and laying down rules to meet new and unprovided cases arising under changing circumstances of time and condition. It settled the rules of the descent of property, the different methods of acquiring and transferring property, and of validating and enforce-

[1] The Common Law, 4 ed., by Runnington, Dublin, 1792, p. 3.

ing contracts. In these respects it differed in many important particulars from the civil law. By the former, lands descended to the eldest son, except in the circumscribed cases of gavel kind and borough English; by the latter all the children shared equally. The descent of landed property under the common law was the outgrowth of the feudal system. The common law, we may therefore state, is that law not set down in writing, and which receives its binding power, as a law, from long continued and immemorial use, and general reception throughout the realm. Those usages, customs and rules are declared by the judges of the land in interpreting the law, of which more hereafter. It is more easy to speak of the written or statute law of any country. Mr. Bishop[1] has forcibly said that "the world has yet discovered but two forms of law, doubtless the only forms possible — the one being reason, the other command. In England and the United States the former is called the common law; on the continent of Europe it is called the civil law, having been derived from the Roman jurists." He should also have included in this statement England's great English speaking colonies, as they are governed by the common law. Mr. Bishop fears that "the great and

[1] Non-Contract Law, p. 618, sec. 1302.

overwhelming danger to our law is the needless multiplication of statutes." We must all admit there is force in this criticism. Almost every incipient legislator feels it to be his bounden duty to emphasize his entry into public life, and to illustrate his genius for statesmanship by placing some law upon the statute book.

Now the written or statute law is only supposed to exist for the purpose of declaring or modifying the unwritten or common law. Hence it follows that legislation should in all cases seek to improve upon existing conditions. I am not arguing against change in our laws, but change should be reasonably called for in the public interests, and well considered before being adopted. Change must necessarily take place. The growth of a country in population, wealth, industrial activity, methods of transit, and other modes of development, renders indispensable changes in existing laws. What suited a country of sparse population, small means, and simple habits or pursuits, would very inadequately meet the requirements of the same country having a dense population congregated in busy cities, devoted to great manufacturing enterprises, and bidding for a share of the world's commerce. Let me illustrate. When the government of a country required

private property for public uses, under the doctrine of Eminent Domain it appropriated what it required, giving to the owner a reasonable or just compensation therefor. The property, however, was taken, whether the owner was willing or not. That was allowed and justified on the ground that the individual held his property from the Crown, and that the Crown had a right, as trustee for the public, to resume possession of that property, or any portion of it, whenever the necessities of the public services so required. But that doctrine did not apply as between subject and subject, or as between subject and corporations. What a man owned was his own, and no one else, except the Crown, could lawfully disturb him in its enjoyment against his will. The experience of the last half century shows how that principle has been expanded. The term *public use*, as interpreted by the courts, does not mean that the property sought to be expropriated must be for the government, or a body standing for the public. The exercise of the power is permitted even to private corporations upon its appearing that the object sought is for the advancement of the general welfare or the public good. And in every instance the judgment of the legislature must be satisfied as to the utility of the proposed object before grant-

ing the right to expropriate. A rigid adherence to the doctrine, as first propounded, would have proved a great hindrance to the expansion of public improvements. The growth of trade and commerce demanded certain and rapid transit. Scientific discovery, quickened, no doubt, by material needs, devised the methods of overcoming time and distance in the transit of passengers, freight, and thought. It became manifest to the supreme authority of the country—the legislature—that it would be quite impossible to derive adequate results from scientific discovery and private enterprise without modifications of the law. That was especially the case with reference to the application of steam as a motive power for transit by land. Without such modifications private corporations could not have carried forward successfully the great undertakings which have been accomplished. These remarks are especially applicable to such works as railways and canals. It is not necessary to go into particulars; the instances will readily occur to the minds of all. The legislature has in all such cases provided that indemnity shall be given for the property thus compulsorily expropriated. The point I desire to emphasize is, that the statute law is a change upon the common law, and is called for, from time to time, to meet exigencies not

thought of or provided for under the common law. The same statements made respecting railways and canals can also be made, *mutatis mutandis*, respecting many other departments of industrial activity. The changed relations brought about by material development and other causes necessitated the intervention of the legislature. And yet the student of the common law must be struck at the great adaptability of that system — as a system — to meet the requirements of the great social and commercial changes which have taken place, and are taking place, in the world As Mr. Bishop has pertinently put it, the common law is founded on reason, not command; and herein lies its superiority over every other system. Founded on reason, and governed by principles of elastic application, the common law system has been largely able to meet the changed conditions of society, arising from the diffusion of knowledge, the spread of wider principles of human freedom, and the enormous accumulation of wealth. Close beside the common and statute law has grown up a body of law known as case or judge-made law. It is quite separate from, and yet closely dependent upon, them both. Human language is only an imperfect instrument to convey thought, ideas, intention. It is the medium or instrument we

employ to convey to the state, to the individual, the intent or purport of the law—its commands or sanctions. It therefore necessarily follows that the correct meaning of the lawgiver's intent must depend largely upon the efficiency of the instrument employed. It has always been found necessary for the state to commission officials—known among us as judges—to explain and interpret the meaning of the law, as well as to enforce its sanctions. Differences do not generally arise among lawyers as to what are the correct principles of law which should prevail and govern the determination of a particular case. The difficulty arises when the principles of the law are sought to be applied to the facts of the case in controversy. The exercise of that faculty requires sound judgment, a critical discrimination as to what is relevant, and what, in short, is the actual point to be decided. The language employed in stating the law may be obscure, ambiguous, capable of two or three meanings, or may even seem contradictory. Under such circumstances, when a controversy arises, each party to the dispute will naturally contend for that construction, that meaning, most favorable to his interests. The judges are then called upon to put a construction upon the law, and to state its meaning. The judicial opinions in

all English speaking countries, in the higher courts, are published by authority for future reference and guidance. From this practice we have the law reports. The reports in the mother land extend back to the time of Edward the Second. In Great Britain, the colonies, and the United States, there must now[1] be over 6,000 volumes of these reports. Probably the following estimate will be found approximately correct: England, 1,700 volumes; Ireland, 225 volumes; Scotland, 325 volumes; Canada, 300 volumes; Australia and the other colonies, 250 volumes; and the United States 3,500 volumes; or a total of 6,300 volumes of reports. Much of the law found in these reports is what is known as "judge-made" law. The intent by having these reports is to make the law certain, to explain difficulties and contradictions, and to have authoritative decisions. Notwithstanding these precautions, difficulties continue, the decisions do not at all times harmonize, in fact in some instances they are irreconcilable. But as a general rule the system fairly meets the ends sought, and the decided cases are preserved in the reports, and in the same court are followed as authoritative until reversed or modified by a higher or appeal court. In this respect our system differs from that of conti-

[1] 1892.

nental Europe. Under the latter system judicial decisions have generally no binding force, and are not looked to as precedents. We can well believe that under such conditions there cannot be the same certainty in the administration of the law. Under that system there is also a marked divergence from ours in some important directions. With us all persons stand equally before the law. But under the doctrine of the *droit administratif*, especially as interpreted in France, the government, and all persons acting for or on behalf of the state, are held to have rights and privileges different from those which obtain between citizens as such.[1] With us all persons stand equally before the law, and the decisions of our courts are for the purpose of rendering the law more certain. Instead, however, of a decrease in the number of the reports yearly, they are on the increase every year, much to the perplexity of the legal profession. The reports contain the "Case" law, so called. This law is not in the strict sense the common or statute law, but the views of the judges as to the correct meaning of the common or statute law as applied to disputed questions between litigants. Spencer's definition, "law embodies the dictates of the dead to the living," is especially apposite as regards

[1] See Dicey, Law of the Con., 4 ed., p. 310.

case law. We all know that after an act of the legislature has been passed affecting in many ways private interests or rights, the courts are called upon frequently to determine and declare its operation and limitations. And it may require some years before the meaning of the particular act has been fully settled. This experience points strongly to the necessity of well considered action before entering upon a change. Reform or alteration should not be at a stand-still because of over-caution, but no legislative change in our laws should be promoted merely on speculative grounds.

Having said this much with reference to our laws, the question very naturally arises, what has all this vast system, and the machinery for putting it in force, to do with the state and the individual? It is an object of prime importance to me, as a member of a community, to feel and know that ample means of redress are available to punish those who may attempt to injure me in person or estate. It is likewise a guarantee of tranquility for the community to feel there is a power, dormant it may be, but ready to spring into action to protect all from unlawful interference at the hands of others. There have been times in the history of the mother country when private disputes were settled in ways far different from present methods.

Take, for instance, wager of battle, ordeal, the infliction of punishment by the one injured or seeking redress, the law of retaliation, and other methods equally primitive, barbarous and dangerous. No man can safely be permitted to act as judge, juror and sheriff's officer in his own case. Our law wisely forbids that. We are in the state, we are members of it, and it owes us protection, and we in turn owe it the performance of certain duties. The law, as applicable to a member of society, is only irksome when there is a disposition not to obey it. Law exists to guarantee security to the community, to deter the wrong-doer from pursuing his evil course, and to inflict punishment upon those violating its commands. How dreadful it would appear to us of the present time if guilt or innocence were tested by the ordeal—by the hot iron—by wager of battle, or by the "accursed bread." How silly it would seem if the settlement of a disputed line fence were attempted by methods adopted by our forefathers long centuries ago. What an undesirable country to live in where a person assaulted could vindicate the offended majesty of law, and seek reparation for the injury, by assaulting his assailant in turn. How startling it would seem to us now if the relatives or friends of one murdered demanded the right to inflict the

death penalty upon the murderer. Happily for us we are governed by wiser and better laws than those indicated, and yet our forefathers in the mother land in early times were so governed. It is a maxim of our jurisprudence that a law does not become obsolete by non-user. If once upon the statute book, and unrepealed, it can be invoked on any fitting occasion. The Court of King's Bench in England, as late as 1818,[1] decided that the accused had a right to be tried by wager of battle. The incident caused the repeal of the old law by the legislature. As early as 1372, in the time of Edward the Third, a law was passed excluding practising lawyers from parliament, and it was not formally repealed till 1871.[2]

Laws enacted by legislative authority, constitutionally speaking, are an expression of the will of the people. In a country possessing representative institutions such as ours, the people elect the law-makers, and these law-makers, as delegates of the people, can fairly be said in their proceedings to express the popular will. In theory this is correct, but in practice there are exceptions. The legislature, on occasions, may not properly voice public opinion in the work of legislation, but the

[1] Ashford *vs.* Thornton, 1 B. & Ald. 405.

[2] See Taswell-Langmead, Con. Hist., 4 ed. 297.

remedy can only be applied by inducing the legislature to repeal the law, and, in case of refusal, to select a legislature which will. All law should be supported by public opinion, otherwise it may be administered inefficiently. Respect for law, and its proper and speedy enforcement, is one of the great bulwarks of social and political security. Let it be once understood that the law is inefficient, or that those entrusted with its enforcement are careless or negligent, and you admit into the social conditions a spirit directly tending to demoralization. Fortunately for us lynch law does not prevail in our midst. Unfortunately, from statements we read, that system of law does occasionally obtain in some portions of the world. And so far as now advised, these countries are not deficient in the possession of systems of jurisprudence amply sufficient to protect both life and property. What, then, is the difficulty? Wherein lies the trouble? It is found in the fact that the people have lost confidence in the prompt and vigorous administration of the law to protect them from aggression. Take an instance for illustration. A great criminal is arraigned for the commission of a cruel and cold-blooded crime. By some means he escapes punishment for his wrongdoing and gains his liberty. Other cases of

miscarriage of justice occur. Public confidence in the established methods of administration is destroyed; the people, for the time being, lose faith in the power of the laws to shield them from wrong; they realize the necessity of keeping the evil-disposed in wholesome dread of some power, and they at length rise in their might, take the law into their own hands, and inflict summary punishment upon offenders. I am not speaking in this connection as to lynchings which take place in defiance of all law—when prejudice of caste or color overrides all respect for law or its proper administration. In some of the states of the United States the negro charged with the commission of crime has but small opportunity for a fair trial. We must deplore the introduction of irregular methods of administering law, and yet, when the public authority is lax or inefficient, there must be some restraint, some assurance of security to person and property. It may, however, be admitted that this position, as a general rule of conduct, is quite correct, but that it is not applicable to some laws, especially those against public policy or the general welfare. But the question in all such cases must arise, who is to judge as to what is the public utility or the general welfare? Is it the authority which formulated and enacted

the particular law, or, it may be, the individual whose interest it is to disobey? There must be ultimate authority somewhere in the state, and that authority should be uniform and equally binding upon all. If each individual had the right to judge, and from that to act or to refuse to act, there could be no uniformity, no equality, but great confusion. Under such conditions there would be no obedience to law, and it is not necessary to repeat that open violation of any law on the statute book will soon beget contempt of all law. It is upon this ground we deem it highly important to inculcate a respect for law and its due enforcement. As a general rule, I believe, that feeling has a strong hold upon the people of this country. We notice this especially when officers of the law, armed with legal process, seek to execute such process, either in the arrest of the person or the attachment of property. Men, having no regard for right, will nevertheless allow themselves to be arrested, or their property attached, feeling that the act is done, not by the officer who executes the process, but by that mysterious impalpable something we call law, which, as already pointed out, "hears without ears, sees without eyes, moves without feet, and seizes without hands." This must have been the feeling of a man of large stature

arrested by a constable of small size in the State of Massachusetts. The diminutive officer of the law stood on tip-toe, and, tapping the defendant on the shoulder, informed him that he was his prisoner. The party arrested looked down contemptuously upon the constable, and threatened to pick him up with one hand and shake him. This was quite too much. The constable felt, no doubt, the majesty of the law was being offended by such disregard of his official dignity. He stood off a few paces, looked up at his prisoner, and triumphantly said: "I wish you to understand, sir, if you shake me, you will shake the whole commonwealth of Massachusetts." According to the story, that was quite sufficient. The mysterious power of law supposed to be wrapped up in the person of the officer, and wielded by him, settled the question, and the threatened shaking did not take place. This incident quite accurately expresses the feeling prevailing in every well governed state as to the efficacy and potency of law. In the interest, therefore, of the individual and the state, there should be no doubt as to the certainty of enforcing legal rights and punishing wrongs. We need not, in this connection, trouble ourselves as to any theories about the nature of society and the supposed terms of the social compact.

Some writers, notably Sir William Blackstone, maintain that society is formed, on the tacit agreement at least, that each member has voluntarily given up some of his personal rights to the general body for the public good. Putting the theory in different language, it is contended that the members of the state have agreed among themselves that each shall denude himself of certain rights and liberties he may possess in a state of nature for the public good. And it is upon this supposed contractual relation, we are told, that the state has the right to legislate as it does. It is quite unnecessary for me to say that the contract has never yet been produced; and no less an authority than Sir Henry Maine repudiates any such theory. Men are born into society. They have no option in the premises, and whether they are willing or unwilling, they must obey the laws of the society into which they are born, so long as they remain members of it. History has preserved no record of the time or circumstances when people roaming in a state of nature met together and entered into any such compact. Guizot[1] fully and clearly discusses this theory. The first social law he declares to be justice and reason. Man's sub-

[1] Representative Government in Europe, Lecture VI., translation by Scoble, p. 57.

mission to a superior force is not really submission to law. Without submission to law there is no society and no government. "This necessary co-existence," he says, "of society and government shows the absurdity of the hypothesis of the social contract. Rousseau presents us with the picture of men already united together into a society, but without rule, and exerting themselves to create one; as if society did not itself presuppose the existence of a rule to which it was indebted for its existence. If there is no rule there is no society; there are only individuals united and kept together by force. This hypothesis, then, of a primitive contract, as the only legitimate source of social law, rests upon an assumption that is necessarily false and impossible." The supreme authority of every country frames laws and ordinances for the government of the people, and these laws are changed from time to time to suit the varying circumstances and development of the people. As a recent writer has well observed, "it is impossible to imagine a body of positive law equally fitted for all times and circumstances; and experience shows that the symmetry of a sound philosophical system of jurisprudence can only be maintained by adapting it from time to time to the progress and common feelings of the people." I have already called

attention to the vast body of case or judge-made law in the English language, spread over more than 6,000 volumes of reports.[1] As already stated, these reports are published by authority. Such publication is for the purpose of rendering them easily accessible, and to ensure uniformity of opinion or decision in the particular court. Courts in our country have adopted for their guidance the maxim *stare decisis*. It is a wholesome rule, and should have universal application. It would be highly inconvenient and impolitic if judges of the same court did not hold themselves bound by the decisions of their predecessors. Not to do so would introduce uncertainty and confusion into our jurisprudence. When a court has, after mature consideration, decided a principle of law, it should not thereafter, except upon rare occasion, depart from that decision. All courts should hold themselves bound by their decisions until corrected by a court of appeal. We base our personal relations, and the acquisition and tenure of property, largely upon the judgments of our courts. What security would there be either for person or property if it were allowable or customary for those courts to be guided by no principle, to respect no former decision, but to decide according to the then

[1] Now (1898) fully 7,000.

view of the tribunal? People may have acquired property upon the reasonable expectation that a court of law will be consistent with itself, will respect its own decisions, and will not, by a vacillating, contradictory course, introduce doubt and confusion into the administration of justice. A moment's reflection will indicate what would be the result of such a course. I purchase property, knowing at the time the rule of law governing my right to acquire and retain. I purchase upon the faith that the law is and will continue to be as expounded by the court. Would it not be unjust for the court, after my purchase, to lay down a contrary doctrine, and thus, it may be, divest me of what I have purchased in good faith relying on the consistency of judicial decision? How unfortunate would be such a condition of affairs. But in continental Europe judicial decisions in general have no binding effect as precedents. It is submitted, the common law system, in this respect, surpasses its rival, the civil law system. There cannot be much real or substantial progress in a country where the administration of law is uncertain. The prime necessity for true progress is faith in the stability of the institutions of the state, and an assurance that the citizen, within proper limitations, will be free in person and undisturbed in the

possession of his property. These are objects which should never be lost sight of by law-makers or the administrators of the law. The great object, then, of our legal system is to protect the individual in the pursuit of happiness, in social and intellectual development, and in the acquisition of wealth. Writers of eminence have maintained with great force the superiority of our common law over its great rival system, the civil law, to accomplish these objects. Judge Cooley, in a clear and masterly analysis, says: "But on the whole the system was the best foundation on which to erect an enduring structure of civil liberty which the world has ever known. It was the peculiar excellence of the common law of England that it recognized the worth, and sought especially to protect the rights and privileges of the individual man. Its maxims were those of a sturdy and independent race, accustomed to an unusual degree of freedom of thought and action, and to share in the administration of public affairs; and arbitrary power and uncontrolled authority were not recognized in its principles. Awe surrounded and majesty clothed the king, but the humblest subject might shut the door of his cottage against him, and defend from intrusion that privacy which was as sacred as the kingly prerogatives. The system was the opposite of

servile; its features implied boldness and independent self-reliance on the part of the people; and if the criminal code was harsh, it at least escaped the inquisitorial features which were apparent in criminal procedure of other civilized countries, and which have ever been fruitful of injustice, oppression and terror."[1] Sir Frederick Pollock[2] discusses this question in his usual clear cut manner. He admits that the civil law failed of obedience in only one corner of Europe, and that was in England. He expresses the opinion that the world and civilization have gained in consequence. If such had not been the case there would have been no rival to the civil law system. He further declares that "It is hardly too much to say that the possibility of comparative jurisprudence would have been in extreme danger; for broadly speaking, whatever is not of England in the form of modern jurisprudence is of Rome, or of Roman mould. In law, as in politics, the severance of Britain by a world's breadth from the world of Rome has fostered a new birth which mankind could ill have spared. And the growth of English politics is more closely connected with the independent growth and strength of English law than has

[1] Con. Limitations, p. 30.

[2] Oxford Lectures, London, 1890, p. 46.

been commonly perceived or can be gathered from the common accounts of English history." Continental Europe has been governed by the civil law—a system which, as already stated, did not find much favor with the English people, as it was thought to favor absolutism in government. As early as 1149, Vacarius, a distinguished continental jurist, delivered lectures on the civil law at Oxford, and wrote some works on that system for the use of the students. But the prevailing prejudice against the system was so strong that King Stephen prohibited his lecturing and ordered the destruction of his books. Our Saxon forefathers were ever imbued with a strong sense of personal freedom, and in all cases resolutely resisted every effort to impair that freedom.[1]

The acquisition of property is governed by law, and property is held, enjoyed and transferred under well known principles of legal rights. Property is usually divided by legal writers into three classes—real, personal, and mixed, but for all practical purposes we may say, generally, there are two kinds of property, real and personal. In former lectures atten-

[1] The reader will be well repaid by a perusal of Dillon's Laws and Jurisprudence of England and America; Scrutton's Influence of Roman Law upon English Law; and Pollock & Maitland's History of English Law.

tion has been called to the forms and other requisites observed in creating contractual relations. It is not necessary at this time to dwell upon those phases of acquiring and transferring property. Man in his primitive state acquired a right of property by occupancy. In fact the principle of acquisition by occupancy is more comprehensive than is generally supposed. The roving hunter at night pitched his tent on the mountain side, or in the valley beside the stream, and so far as the rest of the world was concerned he was the owner of the land he occupied, but only so long as his occupation lasted. The moment he struck his tent and left the spot his ownership ceased, and it was equally competent for the next comer to take possession and occupy under a similar tenure. The birds of the air, the fish of the waters, the fruits of the earth, belonged to those who first secured them, which was title by occupancy. In that early primeval time the bounties of nature were capable of being owned by all, and enjoyed as fully and freely as the air we breathe. But in process of time the nomadic habit ceased. Society took form, and the idea of proprietorship grew and developed, so that now it is difficult to find anything, outside of the air of heaven, without an owner. And it is quite certain that there would be no great

difficulty in organizing a trust or combine to bottle and sell by the mouthful the air we breathe, if there were but slight chances of success in the attempt. Speaking chiefly of personal property, we acquire title by original acquisition, by transfer, through act of the law; and by transfer, through act of the parties. In this division I follow the commentaries of Chancellor Kent. It is sufficiently comprehensive to include all possible cases. By original acquisition is understood acquisition (1) by occupancy, (2) accession. This latter division includes natural increase of flocks and herds, accretion of the soil. And (3) we have acquisition by intellectual labor. Under the latter division we have patents of invention and copyright of authors. A person under our law can have as substantial a right in, and as full enjoyment of the works of his ingenuity and genius, as in the labor of the hand. This description of property bears a very close relationship to property acquired by occupancy. In fact the right of proprietorship arises from a species of occupancy. The inventor of the steam-engine, the spinning-jenny, the incandescent lamp, is as much entitled to property therein on account of first occupancy as the pioneer on the open prairie is entitled to ownership of the land he reclaims and occupies.

The principle in both cases is the same. The law which guarantees to an inventor or author the fruits of his labor has a direct tendency to stimulate and encourage in such pursuits. From the labors of the inventor, the man of science, the man of letters, have arisen forces and influences which have in large measure affected the world for good. It is therefore the part of wisdom to protect all these classes in the acquisitions of their respective pursuits. We acquire property under the second division by forfeiture, judgment of a court, insolvency, intestacy, and it may be by some other methods. Under the third head, *i. e.*, by the act of the parties, we acquire by gift, which may be (1) *inter vivos.*, *i. e.*, one can make a valid gift of property to another without reference to any future event, and to take effect absolutely and at once; or (2) the gift may be one *causa mortis*, *i. e.*, one in contemplation and expectation of death can make a gift of personal property to take effect in case of death, but which will become void in the event of the donor recovering from his illness. There is much curious discussion, and there are many adjudications of courts upon this subject. It is, however, not necessary to pursue the subject further, except to say in the case of a gift *causa mortis* there must be a delivery of the intended gift, either

actual or constructive, and this must be done at a time when the donor is in contemplation of death.

I now desire to discuss briefly the question of contracts, as the second method of acquiring property is by contract—by act of the parties. A contract is "an agreement between competent parties, upon a legal consideration, to do or to abstain from doing some act." It is not necessary to discuss the three divisions of contract. It will be quite sufficient in this connection to confine our attention to simple contracts, or contracts by parol, *i. e.*, contracts either verbal or in writing not under seal. A contract to be valid must be between competent parties, that is, between parties capable of contracting. Sir Frederick Pollock, in his well known work on contracts, says: "Every agreement and promise enforceable by law is a contract." There can be no contract between parties incapable of contracting, or against whom you cannot enforce the agreement. An idiot or lunatic cannot enter into a valid contract. An infant and a married woman[1] stand

[1] This has since been changed in this province by 58 Vict., c. 24. A married woman now can sue and be sued in respect of her own property as if she were unmarried. The legislature has in great measure adopted the English Married Woman's Property Act of 1882.

in much the same position. It is of the essence of a contract that there must be an assent—a mutual agreement between the parties. But no assent can be given by an idiot or lunatic. Not being capable of assenting or agreeing, they cannot enter into a binding contract. The law also, in order to protect infants, persons under the age of twenty-one years, has declared that they cannot bind themselves by contract, and the same is the case with married women[1] without the consent of their husbands. Instances have arisen where the estates of all these classes have been held liable for necessaries supplied, but, speaking generally, the law is as I have stated. Pothier, the great French jurist, in his work on Obligations,[2] says a contract is a "particular kind of an agreement"; that "an agreement is the consent of two or more persons to form some engagement, or to rescind or modify an engagement already made"; and that "that kind of agreement, the object of which is the formation of an engagement, is called a contract." He further most properly states that "a contract includes a concurrence of intention in two parties, one of whom promises something to the other, who on his part accepts such prom-

[1] This is now changed, as already stated.

[2] Vol. 1, p. 3, translation by Sir William Evans.

ise." In this sense it is held, both by the common and civil law, that a person so intoxicated as to be wholly incapable of understanding the nature of his act, will not be bound. But in all these cases there are limitations which must not be overlooked. If a drunken man or a lunatic confirm his undertaking or agreement after his debauch has worn off, or his mind has become lucid, such confirmation will be binding upon him. And in the same manner an infant, after arriving at full age, may ratify and confirm a contract made when under age. This goes to show that all such contracts are voidable, but not void. There must not only be competent parties, but a valuable consideration to support the contract. It does not follow that the consideration must be ample, must be the full market value for the services rendered or the article sold, but yet it must be what is known in the law as a valuable consideration. An agreement between debtor and creditor, by which the former agrees to pay one-half of his indebtedness, for which the creditor consents to release or give up the rest of the debt, is not binding on the ground there is not a valuable consideration to support the promise to give a discharge. The creditor's promise under such circumstances, although the half has been paid by reason of the promise, will not relieve the

debtor from payment of the full amount of his indebtedness. In law the promise is a mere *nudum pactum*. The principle is this: an agreement by one to obtain a concession or rebate for doing that which by law he is already compelled to do, is not a sufficient consideration upon which to ground a valid contract. If I owe the sum of $100, the law implies a duty on my part to pay the full amount. A payment of $50, although met by the promise that its payment will discharge the full claim, is not sufficient to accomplish that object. The law holds me liable to pay the full amount of the claim. If, however, the debt were not yet due, but existing, and the creditor agreed to accept a part in consideration of immediate payment, that would be a good consideration for the extinguishment of the whole indebtedness.

I refer to these phases of legal growth to indicate the social and commercial development which has taken place since Anglo-Saxon times. This has been well considered by two of our most prominent living writers on legal questions. In a late work[1] they say: "Proceeding to the usual subject matters of Anglo-

[1] Pollock & Maitland, History of English Law, vol. 1, p. 21. This work was published after the delivery of this address, but the quotation has been incorporated in the article as very applicable.

Saxon jurisdiction, we find what may be called the usual archaic features. The only substantive rules that are at all fully set forth have to do with offences and wrongs, mostly those which are of a violent kind, and with theft, mostly cattle-lifting. Except so far as it is involved in the law of theft, the law of property is almost entirely left in the region of unwritten custom and local usage. The law of contract is rudimentary, so rudimentary as to be barely distinguishable from the law of property. In fact people who have no system of credit and very little foreign trade, and who do nearly all their business in person and by word of mouth with neighbors whom they know, have not much occasion for a law of contract." The development of commercial intercourse, and the requirements of a higher civilization, have rendered necessary precise rules as to the law of contract. If the consideration of a contract is to do an immoral or illegal act, or contrary to public policy, the contract is not enforceable. If a person rent a house for the purpose of allowing the same to be used as a bawdy house or house of ill-fame, the purpose would be immoral, and the owner or landlord could not collect any rent. Entering into a contract, the direct effect of which will be to cause a violation of law, will avail

nothing; such contract cannot be enforced. Take a very pertinent illustration. The Canada Temperance Act is in force in some of the counties of this province. If a person residing and carrying on business in a county where the act is in force went to the city of Saint John, where the act is not in force, and purchased intoxicating liquors from a dealer to take to his place of business for sale, the seller cannot recover the price if he knew, or had reasonable grounds for believing, the liquors were to be taken to such county for sale. There are two kinds of simple contracts, express and implied. If I purchase from any one of you a cargo of flour, and agree to pay $5 a barrel for it, which is accepted, that is an express contract as to price. Nothing in that case is left to inference; all the terms as to price are stated; or, in other words, the contract is express. If, on the other hand, I send to a flour merchant and request him to forward me a cargo of flour, saying nothing as to price, the law raises the inference of a promise on my part, upon receipt of the cargo, to pay such price as is reasonable and customary. Again, if I permit a workman to labor in my field, or on my building, under such circumstances that it could not be inferred the work was gratuitous, the law raises a presumption that a tacit agreement

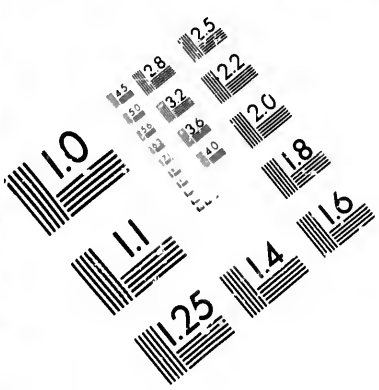
exists by which I am legally bound to pay for the labor what it is reasonably worth. These are all instances of implied contracts, and when the implication of an agreement once arises, the contract is as binding and as capable of enforcement as if it were express. These are instances of contracts made directly between the parties, or under such circumstances as are tantamount to direct agreement. The changed conditions of conducting business by reason of postal, telegraphic, and telephonic communication, have caused the courts to lay down rules as to when the contract is complete. We all know, as a matter of fact, that the business of the world now could not well be carried on except by correspondence. From this cause curious questions have arisen for the decision of the courts. I have already stated that a contract includes a concurrence of intention in two competent parties at a given time to enter into an agreement. When the proposal is made and accepted, it becomes a contract, but not until then. Suppose, then, I write to a merchant in Montreal offering to purchase from him a cargo of sugars at a stated price; the correspondent receives the letter in due course of post, makes up his mind to accept the offer, and writes me to that effect. The next day, however, before the Montreal mer-

chant has written his acceptance, I change my mind, and at once write him to that effect. Our letters, it may be, cross each other, mine of revocation, his of acceptance. What, under such circumstances, are the relative rights of the parties? Pothier, in his work on Sales,[1] says: "The consent of the parties, which is of the essence of the contract of sale, consists in a concurrence of the will of the seller to sell a particular thing to the buyer for a particular price, and of the buyer to buy of him the same thing for the same price. How ought this consent to intervene, and in relation to what?" This writer, following the rule of the civil law, declares that the proposer can revoke an offer sent by letter, and that such revocation is valid, although the merchant to whom the proposal has been made accepts and despatches his letter of acceptance before he receives the letter of revocation. Pothier evidently sees the illogical position this statement of the law involves, for immediately after he admits that, if the merchant forwarding an acceptance is put to any expense, or is occasioned any loss in consequence of the proposer's revocation, he must be indemnified by the proposer. The right to indemnity must logically rest upon a breach of contract, but if there has been no contract,

[1] Cushing's ed., Boston, 1839.

then there can have been no breach, and consequently no right to indemnity. The English rule is different. If the merchant to whom the proposal is made, before notice of revocation, by post or telegraph in the usual course of business, accepts the proposal, a valid contract is made at the time of posting the letter or sending the telegram, although the proposer, before his receipt of the letter or telegram, has sent a revocation. And this is the case, although the acceptance may have miscarried, and may have never reached its destination.[1] If the revocation reaches the acceptor before he sends his acceptance, then, of course, there can be no binding contract. But not having received any such intimation of change of offer, a contract is completed the moment the acceptor mails or despatches in the usual course his acceptance of the terms of the proposal. It is necessary to say that the acceptance must be unconditional and in the terms of the offer. If I offer to sell an article of merchandise of a certain quality and at a certain price, and according to certain specified modes of payment, there will arise no contract if the one to whom the offer is made consents, but upon conditions at variance with the terms proposed. The acceptance must be in the identical terms of the

[1] Pollock on Contracts, 5th ed., p. 36.



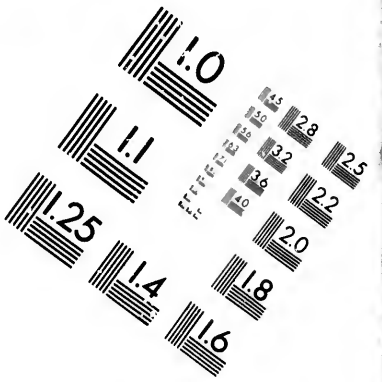
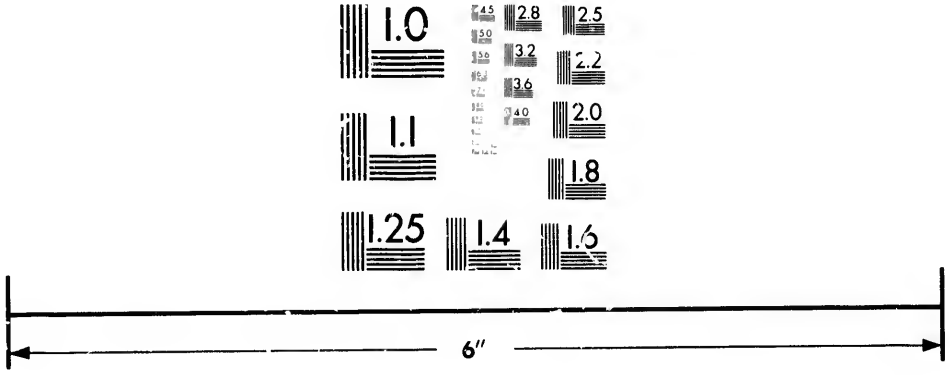
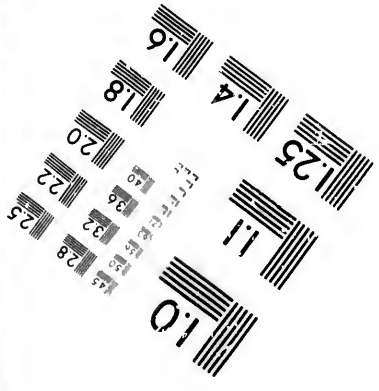
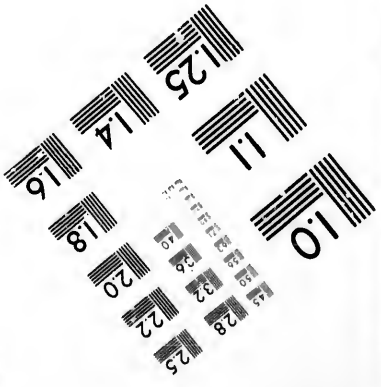


IMAGE EVALUATION TEST TARGET (MT-3)







Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

2.8
2.5
3.2
2.2
2.0
1.0

offer, otherwise there will be no binding contract. For instance, if I offer to sell a cargo of sugars at a stated price, to be paid for in three months from delivery or sale, and you reply, "Yes, I will take the sugars at the price you name, but I must have six months for payment," no contract arises; the parties are not agreed as to terms. It will thus be seen that law adapts itself to the changing conditions of society or national growth. Law has for its object the permanence of society and the promotion of the interests of the individuals composing that society. The state and the individual have reciprocal interests. What really benefits one must also benefit the other.

I cannot conclude better than by quoting from Guthrie's introduction to his translation of Savigny.[1] His words are judicious; they express what I believe to be proper views. He says: "Law is thus in a state of perpetual growth; and the main and most influential condition of this growth is its generation within a community held together by a common spirit and common traditions. The character and whole outward circumstances of the nation in which it springs up determine in a very great degree the nature and peculiarities of each system of law; and the rapidity of its growth,

[1] Private International Law, p. 36.

and the promptitude with which it is adapted to the necessities and opinions of those who live under it, are in some proportion to the perfection of the national organization. The state is the organ of the growth of law within the nation. As a family expands into a nation, the rudimental forms of law and of the state (which is itself the highest production of the spirit of law) are developed simultaneously, and go on to more perfection as the nation advances. In short, the birth of society and of law is one. *Ubi societas ibi jus est.*"

INDEX.

D.

I.

J.

K.

L.