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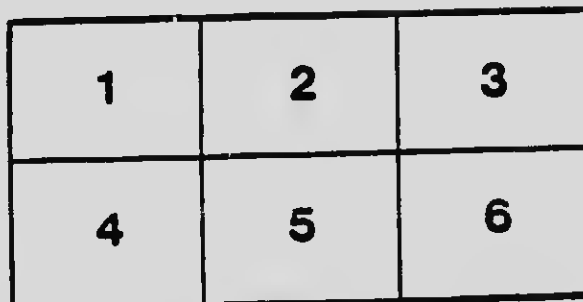
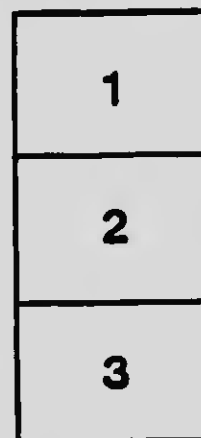
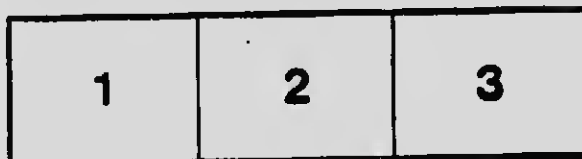
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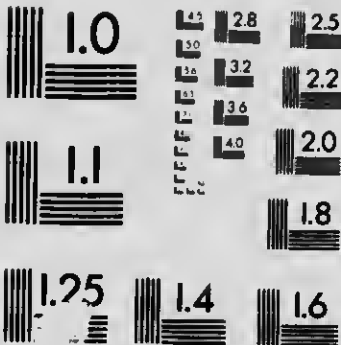
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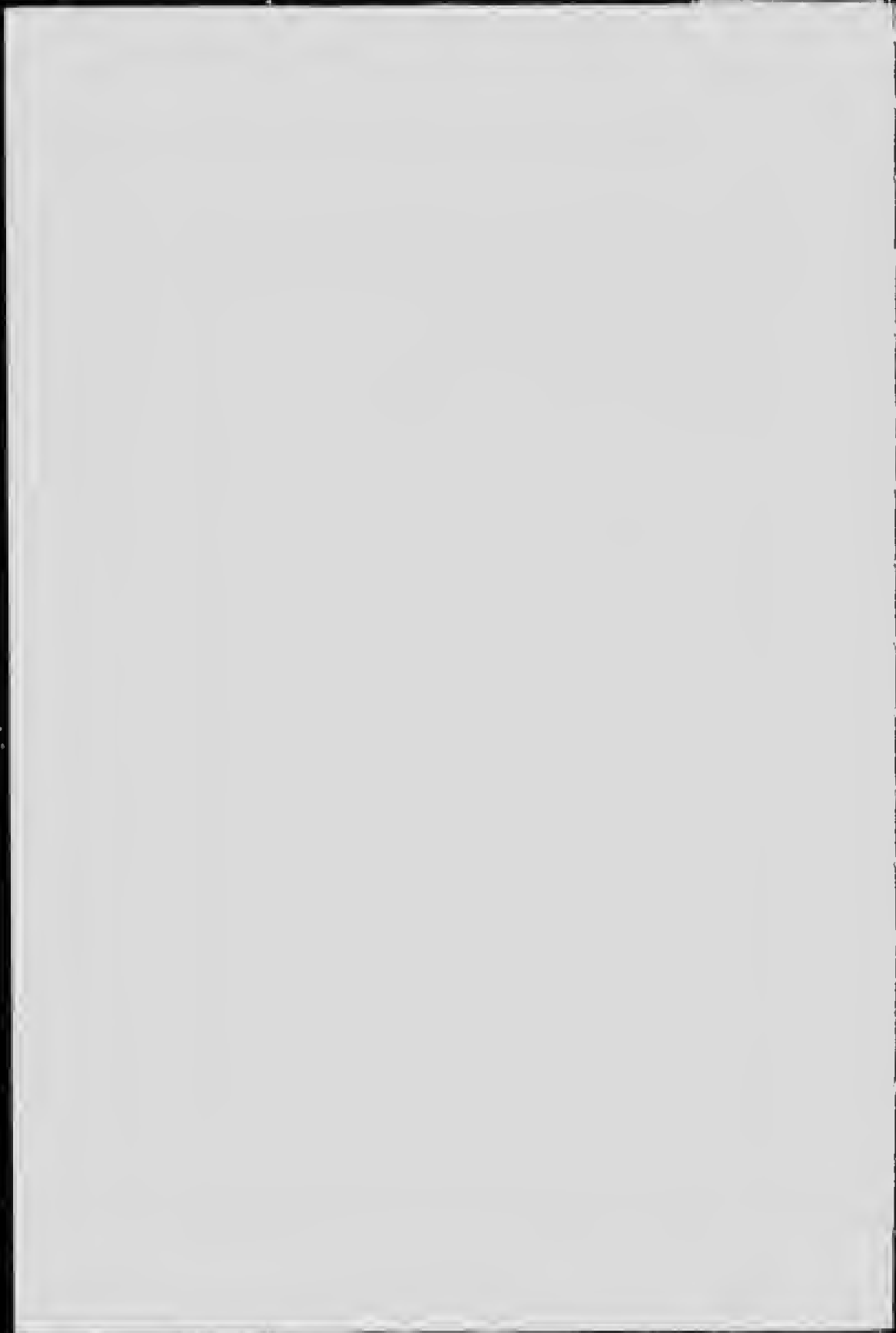
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The United States and Canada

THE COMMENCEMENT ORATION,
SYRACUSE UNIVERSITY,
JUNE 14TH, 1911.

BY

The Honourable Mr. Justice Riddell,
KING'S BENCH DIVISION, H.C.J.
ONTARIO



With the Compliments of

WILLIAM RENWICK RIDDELL.

The United States and Canada.

The Commencement Oration, Syracuse University, June 14th, 1911.

THE HONOURABLE WILLIAM RENWICK RIDDELL, L.H.D., ETC.

*Mr. Chancellor, Fathers and Brethren, Ladies and
Gentlemen:*

When I say that I am glad to be here—now—I am not simply using the language of mere convention.

I am come to you from the adjoining nation and from a University which her sons delight to honour, calling her, as she indeed is, the largest University under the British flag; they do not in their devotion go so far as to say that she is the greatest University under the British flag—as yet—but with the optimism which characterizes the Canadian, they consider even that to be but a matter of years—few, it is hoped.

I bring you greetings from that land and that University, and wish you every possible blessing.

We are told across the Lake, that there are millionaires at the back of this University; and if that is so, we rejoice. But it may be but an invention of the enemy.

“Are millionaires common in America?” asked a stranger. “They are,” answered the American, “most of them.” If millionaires are responsible for

the buildings of this University, it is a matter of regret that they are not more common—in the one sense. No person common in the other sense could have conceived their erection or brought it about in beauty and harmony as they exist. And we might well pray that more of such benefactors should be found to aid in the cause of higher education by furnishing caaste and lovely temples for its pursuit.

But whatever and whoever may be at the back of Syracuse University, I can bear personal testimony that at its head there stands a man—

“A man with head, heart, hand
Like some of the great simple ones gone,
* * * * *
Who can rule and dare not lie.”

—a man who lives by old George Herbert's precept,

“Do all things like a man, not sneakingly,”

and who “girt by friend or foe,” says “the thing he will.”

Was it not Garfield who said, “Dr. Mark Hopkins at one end of a log and a student at the other—that is a University”? How much more may we say, “Dr. Day at one end of this institute of learning and these four thousand students at the other—that is a great University”?

And I most heartily and sincerely congratulate him and you on the progress made by this University, believing and appreciating as I do that advance in true culture and true learning in this University and in this State cannot be without its influence, not only upon this great Union, but also upon the world at large, and not least of all upon my own beloved Canada.

I am to speak to you of the United States and Canada.

On the northern shore of Lake Erie, our magnificent inland sea, are many projections of the land to-

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ward the South, as it were stretching out Canadian hands to the sister country. And on one of the best known of these stand two tall shafts of pine, topped with verdure never failing. These grow from the same soil and spring from the same root; above, they are distinct and wholly self-contained. The pillars stand near together, yet never clash—the lighter, more conspicuous portions of the trees do indeed intermingle; and ever and anon, when stirred by gale or tempest, their branches chafe and fret in noisy commotion. But with the passing of the storm passes also the fury of contending branch: with the calm comes again the peaceful and harmonious interlacing of limb and twig and needle—and the oscillating shaft nodding to its sister is gladdened by the peace above. Long years have these sisters stood on the shore of our Lake, and long have they symbolized the two peoples living on its opposite shores.

For the United States and Canada are from the same soil, have grown on the same continent; they are sprung from the same root and glory in the same ancestry—and while the lighter part of each has, when stirred by the tempest of passion, jarred and fretted and chafed, the solid portion has, in the main, stood firm; and when the storm was over and quiet reigned, those who had wrangled and lashed resumed friendly communion and intermingled one with the other in peace and harmony.

“Behold how good and how pleasant it is for brethren to dwell together in unity.”

The histories are full of war and battle—tales of bloodshed and suffering are told to child and adult—but who has told the story of the long and unbroken peace on each side of the longest international boundary in the world?

Four thousand miles stretches the line between the United States and Canada: and never a fortification or a stronghold—the so-called forts are mere glorified farmhouses, the earthworks like deserted potato pits

—the petty garrisons kept at a few points do no more than play at soldiering—and red coat and blue are rather brothers than members of the army of two nations.

And long may it so continue—yea, *in aeternos annos*.

This peace is, I venture to assert, due to recognition of our kinship—and it did not exist at the beginning of the continent's history. For Canada was always a source of great anxiety to the Colonists to the south while she was French—and from the very first there was the most fixed determination not to allow the French to come within striking distance of "the Lord's own people" who spoke English and were Protestant.

Even so early as 1613 the Colony, led by a Jesuit father and sailing from Houlleur, which had settled on Mt. Desert (the Island off the coast of Maine, now so well known) was attacked by the Virginian, Captain Samuel Argall, who has been called "a sea-captain with piratical tastes"—and he carried off fifteen French in chains, and set the rest adrift on the stormy sea. Virginia sent her ships north and destroyed every vestige of French occupation of the Island, "visited" Ste. Croix and burnt Port Royal.

The expedition in 1628 and 1629, led by David Kirke (Kertk), who might be fairly described in the same language as Argall, cannot be credited to the colonies; but it is safe to say that it was made for their sake. Kirke's conquest of Quebec had but little effect upon the history of either part of North America; though Quebec was British for three years, the peace of St. Germain-en-Laye (1632) gave France back her own—her New France.

Thereafter, for a century and a quarter, the English colonist supplied the Iroquois with arms and ammunition, wherewith to commit havoc on the Frenchman—while the French, not to be behindhand in their thoughtful care for the white man, gave arms

and ammunition to the Francophile aborigines, Huron and Algonquin. English Indians invaded Canada and ravaged that land as French Indians invaded New England and ravaged that—and there can be little doubt that there was not much to choose between them, although, indeed, we hear more about the Indian slaughter of the English-speaking Americans—all the English colonists could write—and most of them did.

New York did not become English in allegiance till 1664, when Colonel Richard Nicolls took possession for the King of York; but she lost no time in showing herself English, both in feeling and in enterprise (for the short period of renewed Dutch rule in 1673 and 1674 may be disregarded), and indeed she had been more than half Anglicised before her change of flag. In the decade, 1680-1690, both English and Dutch in New York endeavoured by presents, and especially by furnishing gratis, guns, powder and lead, to induce the Iroquois to war against the French—and it was only the view of the Iroquois that it would be better first of all to destroy the Christian Indians, allies of the French-Canadians, that saved New France from a most devastating and horrible warfare at that time—the subjects of James II hesitated themselves to attack the subjects of his French friend; but they had no compunctions about doing by Indians what they would have liked to do in person. “Qui facit per alium, facit per se” does not always apply internationally.

But on the 13th February, 1689, William and Mary were proclaimed King and Queen of England; and the long course of Stewart truckling to France came to an end.

In 1690, the Grand Alliance of Germany, Spain, Holland and England was formed against Louis XIV; and this continent did not fail of its share of war. The Le Moynes set out from Montreal against New York and Hertel from Three Rivers—and these

captured and destroyed Scheneetady and Salmon Falls; while a third expedition from Quebec under Portneuf captured and sacked Canso.

But Boston and New York were awake. A Conference was held at Albany at which the invasion of Canada by land and sea was determined upon; and the Kennebec backwoodsman, William Phillips, was appointed to lead the retaliatory fleet. He failed to take Quebec, though he had under his command men from Massachusetts, Connecticut and Plymouth. Sons of Connecticut may, if they choose, account for this failure by the fact that their country had withdrawn part of her contingent to protect her own northern settlements.

The force invading by land composed of sixteen hundred New Yorkers who went by Lake Champlain had no better fortune at Laprairie. .

Then the colonists urged the mother country to send an expedition for the conquest of Canada; and in 1692 it was decided to grant this request. Accordingly, in 1693, a fleet was organized to reduce Martinique first, and thereafter Quebec; but it was so reduced by sickness that the project had to be abandoned. Indeed, this fleet did more harm to Boston than to Martinique, for the sickness introduced by it was most destructive—after killing about two-thirds of the sailors and soldiers, it proved in Boston to be the most malignant ever known: so much so indeed as to drive many of the inhabitants away from the city. And they were Bostonians; and the city they were leaving was Boston.

Then the volcano slept—though mutterings were from time to time heard, and the earth was seldom still. In 1709 both land and sea forces were sent against Canada; and at length, in 1711, an advance was made against Quebec with a failure still more pronounced and even disgraceful. In this expedition, which set out from Boston under Sir Hovenden Walker, with Imperial and Massachusetts troops,

everything was mismanaged. Ships were wrecked and hundreds were drowned. Quebec was never even reached—the Admiral thought, or at least said, that the wreck was a merciful intervention of Providence to prevent more fatal mischiefs. Perhaps it was—had it not been for that wreck, there might now be no Canada.

Acadia was being occupied, and the hinterland of the colonies was becoming important—the whole Lake George-Lake Champlain district was the seat of inextinguishable warfare, guerilla and otherwise, between the two irreconcilable people; and at last in 1754 Wolfe was commanded to take Quebec. The colonies were called upon to furnish 20,000 men, and they did furnish 17,500: Massachusetts, 7,000; Connecticut, 5,000; Rhode Island and New Jersey each 1,000; New Hampshire, 800, and New York, 2,680. The relative importance of the colonies is shown by the number of men raised, Connecticut supplying many more than New York, and Massachusetts nearly three times New York's quota (but of course Massachusetts included what is now Maine).

The belief which had become firmly established throughout Canada that Quebec was unassailable by water, proved not quite fallacious. Quebec fell, but it fell assailed by way of the Plains of Abraham. Ticonderoga was avenged. The colonies had their wish and the toast was fulfilled, "British colours on every French fort, post and garrison in America."

It is a satisfaction to know that the three American grenadiers captured by the French at Quebec were not burnt alive as their friends feared they would be. The 2nd and 3rd battalions of Royal Americans were with the besieging army and did their duty manfully; and no difference was made between them and the other English taken prisoner.

And now took place what the more acute observers had foreseen, and some had openly prophesied. When the fear of starvation or privation is removed, the

young man may safely, if he is so inclined, treat the old folks lightly—while they in turn cannot think of him as anything but a mere boy wholly unfit to govern himself or his household. The English (which by this time had become British) Colonies, relieved from the ever-pressing fear of invasion from the alien North, had time to consider their relations with the mother country. So long as the next day might bring a hostile raid by Frenchman or Indian, the assistance of British troops was very desirable, and greatly desired. Nor was there much complaint even if these troops had to be supported by the colonists whose homes they protected—and that though these colonists had not the full control of the money raised for that purpose.

But when there was no longer any fear of French soldier, civilized or savage, as all to the North was now become also British, the case was changed.

It is a part of the very life of English-speaking people that they must govern themselves—for well or ill. Swarms leave the mother hive: these set up a new hive for themselves, governed after the ancestral model, indeed, but self-governed. There is no such phenomenon in English-speaking colonization as in the ancient Greek—nor were these colonists chosen by lot or sent from an inferior grade of the people; they came of their own choice, and many of England's best and bravest found their place in the ranks of the venturesome settlers of the American wilds.

I do not know whether you consider it a matter of pride or not—probably not—but it must be said that New York was not the leader in opposition to the claims of the government of King George—perhaps Massachusetts was the most determined and self-asserting. Whoever the leader, arbitrary acts were met by stubborn resistance; and at length a deplorable, though perhaps inevitable, war broke out between mother and daughter; and America claimed independence.

Canada was never long absent from the minds of the leaders of the revolted colonies. It was always a desideratum that Canada should join the Union and so round off the federation of States. Canada, British, might be dangerous to the colonies now anti-British, as she was when anti-British to them still British. The Continental Congress meeting at Philadelphia issued an address to the Canadians, filled with turgid rhetoric, and more fitted as an argument to philosophers than an appeal to simple people like the inhabitants of Canada. The address wholly failed in its object. Not that the French-Canadians had become enthusiastic British subjects—they had refused to furnish the Governor, Sir Guy Carleton, with provisions for his troops. The address printed in Philadelphia reached very few Canadians; fewer still could read: and those who could read knew of an address to the people of England by that same Congress complaining bitterly of favour shown to the Canadians as a gross betrayal of Protestant principles and inveighing against the toleration of Popery, "that blood-thirsty, idolatrous and hypocritical creed." Catholics who had been repeatedly and in the most solemn manner assured of the free exercise of their religion under the British flag were not likely to choose rather the fellowship in allegiance of those whose representatives so thought and so spoke of their beloved Church and most cherished beliefs.

Montgomery and Arnold were sent North against Montreal and Quebec—the erratic Ethan Allen had made a dismal failure. Montreal was taken, and Montgomery hastened to assist Arnold at Quebec. Montgomery died and Arnold failed.

To Montreal during its occupancy by the Americans came three Commissioners, Benjamin Franklin being one, taking with them a French printer from Philadelphia; and they issued appeals to the people—in vain. The priests, who could read, were immovable—they had been treated with at least re-

spect by the British, they were treated with contumely and even with physical harshness by the Colonials—the British had paid in gold for all the stores taken and labour exacted by them, the Colonials, if they paid at all, paid in paper—and the paper was repudiated by Congress. It is said that the cheating and trickery of the “Bastonnais” is still a tradition in parts of Quebec after a century and a half, as the Angevin Kings of England are still remembered and execrated by the peasants in parts of France after a lapse of six hundred years.

But while all parties recognized that it would be for the advantage of the United Colonies that Canada should join them and so cease to be British, George Washington was sufficiently clear-sighted to recognize that it was better for his country that Canada should be British than that she should become once more French. For, he said, France with a foothold on the left in Canada, on the right in Louisiana and holding all the West of the Continent in the rear of the new nation, would be a greater menace than a British Canada. It is not too much to say that, even then, it was, at least by Washington, appreciated that “blood is thicker than water”; he frowned down Lafayette’s plan to invade Canada with the aid of troops obtained from France.

The revolted colonies wholly failed to carry Canada with them; but they achieved independence for themselves—the wretchedly-conducted war came to an end.

The law-abiding and law-seeking genius of the race asserted itself—for I maintain that the Anglo-Saxon is essentially a lover of law, and of law as a means of deciding disputes. There was, of course, no room in the preliminary articles of 1782, or even in the definitive Treaty of Peace of 1783 for anything but a statement of the rights of the contracting parties; but when time showed that they were not exactly agreed as to the meaning and import of the words

they had employed in common, the case was different. A legislature may declare the rights of parties by a Statute, or parties may make a written agreement; but if they disagree as to the meaning of the words employed by the legislature or by themselves, that meaning must be found, fixed and determined by some tribunal—unless, indeed, the parties fight it out physically.

War is the international equivalent of trial by combat—and war even yet is not wholly obsolete: “ ’Tis true ’tis pity, and pity ’tis ’tis true.”

But these two English peoples, the insular and the continental, had more sense than to rush to war to determine their respective rights under their agreement. And, accordingly, the celebrated John Jay, when sent to have the rights of the American people better defined, as well as to arrange matters which had already led to some trouble, and might lead to more, willingly agreed that the rights as declared by the former treaty should be submitted to a tribunal for decision—while he secured a further agreement as to other matters of international irritation. His treaty, that of 1794, has justly been called the starting point of international arbitration. (Not that arbitration had previously been unknown among the nations, for, as all students of history know, among the states of European Greece and of Asia Minor, arbitration was not at all uncommon. A most interesting article—or, indeed, volume—might be written upon this topic; and I venture to hope that some of the Peace Societies or the Carnegie Trust will have the history of international arbitration, ancient and modern, written at no distant date.) But the Jay Treaty is the first in modern times of an international arbitration between great nations, and, consequently, it deserves all the fame which it actually enjoys.

The negotiation of this Treaty, while it forms, perhaps, Jay's best claim to immortality, was fatal to

his honourable and natural ambition to become President of the United States. Politics were then as bitter and as unjust as at the present day: and charges against Jay of selling his country were made and believed in a generation which listened with patience and almost with credulity to the charge of defrauding the nation made against George Washington—for even he was charged with dishonestly taking public money.

Posterity has been kinder and more just.

By the Treaty of 1794, it was arranged that matters in dispute should be referred to arbitration—and (with one exception) since that time to this, more than 100 years after, there has been no armed conflict between the mother country and her loyal colonies on the one hand, and the separated colonies on the other—a splendid proof of the sense of justice and right on either side.

By Jay's Treaty, it was referred to a Board of Arbitrators selected by the two governments with another selected by these, to determine what river was meant by the "Ste. Croix" in the Treaty of Peace. Three arbitrators were sufficient for that. But there were claims for money by British subjects and American citizens: and with that keen sense of the importance of money which has never failed the Anglo-Saxon since the times in which he assessed, at a fixed money rate, the value of the life of all from king to villein, five arbitrators were to pass upon the money claims. The boundary arbitrators failed, and so, too, did the arbitrators on the British claims. The latter claims were in 1802 compromised at £600,000—while the former dispute continued to trouble the nations for forty years longer. The boundary was a matter directly affecting Canada, as have been most of the matters leading to international dispute, negotiation and arbitration.

Then, as for many years thereafter—and indeed in some remote parts even at this day—Americans were

under the impression—nay, the profound conviction, that monarchy is of necessity tyranny and that Canada was ground down under the iron heel of oppression—and some Americans had sufficient courage and spirit of self-sacrifice to help her to be free. Canada has an awkward way of taking such efforts seriously, and of dealing sternly with those who interfere with her: accordingly when, shortly before the end of the 18th century, agitators from the south of the boundary line came into Canada, they were looked after with care—and one of them, McLane, was in 1797 drawn, hanged and quartered at Quebec for endeavouring to stir up a rebellion against the King.

McLane's scheme involved an invasion by a large force from Vermont, well equipped with artillery, arms and ammunition. There can be no doubt that the government of the United States was quite innocent of any participation in the plan (it is indeed suggested that McLane was partially insane); but there is equally no doubt that the Vermonters wished to have the use of the St. Lawrence and had become discouraged by the attitude of the British Government in regard to the navigation laws.

From almost the very inauguration of the United States there was a party of considerable, though varying, strength which aimed at the absorption of Canada; and from the end of the 18th century, the administration in Canada lived in fear of an attack from the south. These fears were openly expressed in correspondence with the Home authorities; and at length, in 1812, the long anticipated war broke out. I do not intend to discuss the real origin and occasion of that war. Mr. Forster has done so recently at the Washington meeting of the American Society for the Judicial Settlement of International Disputes.

Washington was captured and in part burnt; but so were Newark, the previous, and York (Toronto), the then capital of Upper Canada.

I say nothing further as to the military operations and the success and conduct of the troops on either side—the Adjutant-General of the State of New York, General Verbeek of this city, has said something about that very recently. The war was wholly unnecessary, and the avowed were not the real objects. But that war came soon to an end—it never should have begun.

“*Inter arma silent leges,*” but, “*Armibus silentibus, lex proprium vigorem habet.*” And, accordingly, when the two branches of the race had satiated their taste for gore—for they would—and will—any time sooner fight than eat—law had its way. The Treaty of Ghent was entered into, which provided for a determination by arbitration of the matters still in dispute (Dec. 24th, 1814). The ostensible causes of the war were not so much as mentioned in the Treaty.

There is a bay on the Atlantic coast called the Bay of Passamaquoddy, in which are a few islands—of no great intrinsic value indeed, but then since Saueho Panza’s time an “Island” has had a sentimental value. (I find that in a solemn law report of a very famous case, in 1816, Upper Canada is called an “Island”—I presume, by way of compliment.) These islands in Passamaquoddy Bay were claimed as forming part of the United States, and by the other party as forming part of Nova Scotia. They were not large, but large enough to be a pretext for war, if either country really desired it.

The Treaty of Ghent provided that a Commissioner should be appointed by the King, another by the President, and that these should determine upon the claims. It was provided that if the Commissioners could not agree, the matter was to be referred to some friendly Sovereign or State. Fortunately, the Commissioners, Messrs. Holmes and Barelay, were able to agree: they gave Moose, Dudley and Frederick

Islands to the United States, and the remainder to Britain—and thus that little trouble was settled.

Commissioners were also appointed to determine the northern boundary of Maine: they did not agree: it was arranged in 1827 to refer this to a friendly Sovereign; and the King of the Netherlands was selected. He made an award in 1831 satisfactory to neither party. Both repudiated it, and the boundary was at length settled in 1842 by the Webster-Ashburton Treaty, or the Ashburton "Capitulation," as the sarcastic Palmerston called it. We Canadians have not quite got over the "Capitulation" yet, and we thank Lord Palmerston for that word.

* * * * *

But Messrs. Porter and Barelay, the Commissioners appointed under another clause of the Treaty of Ghent to determine the boundary at the Lakes Ontario, Erie and Huron, were entirely successful in arriving at a satisfactory award; and this award given at Utica, June 18th, 1822, was received with universal approbation.

Consequently, this Treaty was successful in determining two out of three matters of controversy, either of which might easily have caused awkward complications.

Then there was another provision in the Treaty of Ghent which was destined to give trouble subsequently, and that was the article providing for the immediate delivery and restitution of all property taken by the forces of either party during the war. Some slaves had been allowed to get away upon the British war vessels, etc., and claim was made for their value.

By the law of England, when a slave's foot touches English ground, he becomes free.

"Slaves cannot breathe in England; if their lungs
Receive our air, that moment they are free;
They touch our country and their shackles fall."

The warship is by international law part of the coun-

try : and these slaves had therefore become free. England would not give them up, and could not in honour. In 1818 an agreement was made that the liability of Britain to pay should be determined by some friendly Sovereign or State. The matter was referred to the Emperor of Russia, and he made a compromise award; then in 1822 it was agreed that the amount to be paid should be determined by Commissioners appointed by the two governments. In the long run, however, a lump sum was agreed upon by the governments. This was paid, and so that source of trouble was stopped up.

About 1837, a greater or less number of Canadians conceived that they could not, by constitutional means, obtain relief from what was undoubtedly a wrong system of government—an irresponsible government—and in both Upper and Lower Canada rebellions broke out, only to be quickly suppressed. "Sympathizers" from Vermont made their appearance in Lower Canada, but met a speedy repulse. Mackenzie, the leader of the Rebellion in Upper Canada, effected his escape from the loyal troops, and established himself on Navy Island in the Niagara River. A few American sympathizers joined him there; but they did no great harm, and so far as I can learn, no good, for only the lawless remained with him. All along the international boundary "Hunters' Lodges" were organized with the purpose and design of invading Canada; and there was in 1838 a fiasco of an invasion by a small force which took possession of Napierville. They left for home with great celerity upon the approach of a British force.

About the same time an enthusiastic and thoroughly honest patriot, Von Schultz, a Polish refugee in the United States, headed a small body of men, who landed on Canadian soil near Prescott. He was cooped up by the Canadian Militia in the Stone Windmill still standing, and after suffering much loss, he capitulated with the remainder of his men.

After that awkward manner of theirs, of which I have already spoken, the Canadians put him on trial for his life at Kingston. He was defended by a young lawyer, afterwards the first Prime Minister of the Dominion, found guilty and executed with nine others: 136 were sentenced to death, but the number of 10 was considered sufficient *in terrorem*.

Then, at the other end of Upper Canada, a number of "Sympathizers," after they had killed a few Canadians, were caught by Colonel Prince. Some of them were summarily shot, and seven afterwards tried by the civil courts, found guilty of murder and executed. There never were any more "Sympathizers" in Canada, East or West. Placards were posted in Detroit, offering \$800 reward for the Colonel dead, and \$1,000 for him alive; but he kept safe on Canadian soil, and lived for long years thereafter.

A very satisfactory arbitration took place in 1854-55 under a treaty of 1852, in reference to claims made against either country by citizens of the other. Joshua Bates, an American who lived in London, was appointed Umpire by the two Commissioners, and he conducted the arbitration to the common satisfaction of all—except those who lost.

Ever since the organization of the Republic there had been trouble about trade matters, and in 1854 a treaty was entered into, the well-known "Reciprocity Treaty."

I cannot do much more than simply refer to this Treaty, so far as its commercial aspect is concerned. After it had been in force for some twelve years it was denounced by the United States. While it had defects and was not wholly satisfactory to either party, it was not these defects which caused its denunciation. The people of the United States thought—rightly or wrongly, I do not enquire—that Britain had been unfair in her dealings with the North during the Civil War; and the dislike engendered by this

feeling had its outcome in the international relations with Canada. It was thought that Canada should experience the resentment felt against her suzerain, and should suffer vicariously for her sins. And it was openly stated in Congress and elsewhere that Canada must be compelled to unite her destinies with those of the older and more populous nation to the south, under penalty of being cut off from the trade of the continent to which they both belonged.

And so the Treaty was denounced. Whether the pact now under consideration will ever come into effect or whether, if it should, it will be for the advantage of one people or the other, of neither or of both, I do not enquire. Such matters are "taboo" to His Majesty's Justice.

But this Treaty of 1854 provided that two Commissioners should be appointed with power to select, if necessary, a third by lot. These were to examine the coasts of British America and the United States, and determine the places reserved by the Convention of 1818, etc., for the British fishermen. I cannot say that the relations of the two nations in respect of the right to fish have ever been all that could be wished. Perhaps the award of 1910 may clear the air and make these relations more satisfactory and cordial in the future.

While all this was going on in the East, there was a little dispute in the far West. The Hudson's Bay Company and the Puget Sound Agricultural Company had, before 1846, become possessed of property, farms, etc., in the new territory at what was subsequently the North-Western part of the United States, but then a kind of No Man's Land, claimed indeed by Britain as well as the United States. When the nations in 1846 settled that the 49th parallel should be the international boundary, it was agreed that the possession rights of the Hudson's Bay Company and others in occupation of land or other property south of that parallel should be respected by the United

States—and further that any land or other property of the Puget Sound Agricultural Company taken by the United States should be paid for. As was not unnatural the parties could not agree, and, accordingly, in 1863 a Treaty was entered into for the appointment of Commissioners to determine the proper amount to be paid. Each Government was to select one Commissioner, they if necessary a third—or, if they could not agree upon the third man, the King of Italy was to select him. Some six years afterwards, in 1869, Messrs. Alexander S. Johnson and John Rose, the Commissioners, made their award, giving the Hudson's Bay Company \$450,000 and the Puget Sound Agricultural Company \$200,000 in full of all claims. It will, of course, be apparent that this Treaty and award did not affect Canada, as Canada was then constituted. The Dominion of Canada was not formed till 1867, i.e., after the Treaty; and British Columbia adjoining the North-West part of the United States did not form part of the Dominion till 1871, after the award.

So far all the Treaties were made without consultation with Canada. Canada was too young, it was thought, to be entrusted with the negotiation of bargains affecting herself. But in 1871 a change was made of great import to all concerned. For the first time, a Canadian was named one of the Commissioners to negotiate a treaty with the United States—Sir John Alexander Macdonald, K.C.B., Prime Minister of the Dominion. It is the firm conviction of many Canadians that up to this time the rights and interests of Canada never received due consideration—that the mother country was too anxious to have peace with her revolted and separated daughter to pay adequate attention to her who remained a member of the family.

* * * * *

But thereafter this cannot be said. No treaty has, since 1871, been made without the wishes and

claims of Canada receiving the most hearty consideration and support.

The Treaty of Washington, proclaimed 4th July, 1871, is one of the most important agreements ever made between two peoples.

In the first place, there were the claims arising out of the depredations upon American commerce during the civil war by the "Alabama" and other vessels allowed to escape from British ports. It was agreed that a Board of Arbitrators should be appointed, one by Britain, one by the United States and one each by the King of Italy, the Emperor of Brazil and the President of the Swiss Confederation—to meet at Geneva and decide "the Alabama claims" as they were called. That Board was appointed. It met at Geneva, and made an award in which Sir Alexander Cockburn, the British Commissioner, did not join—on the contrary he entered a most vigorous dissent. But Britain made no delay in paying the amount awarded.

Then there were the St. Alban's claim and the like arising from acts of Confederates who had been sheltered in or allowed to escape from Canada, and who did mischief in the Northern States. A Board of three Commissioners was to be appointed for these claims, one by each nation and one by them jointly, and if they could not agree the Spanish Minister at Washington was to appoint. That Board met at Washington and passed on some 500 claims, in most instances unanimously.

Another matter of arbitration arose out of the provisions of this Treaty itself in respect of the privileges given to the citizens of each country to fish in the waters of the other. A Board was to be appointed to investigate and pass upon this matter—one Commissioner by each contracting party and a third by the parties jointly, or, if they could not agree, by the Austrian Minister at the Court of St. James. This Board met at Halifax, and made an award which was

much in excess of the amount the American people had anticipated. For some time it looked as though the award would not be accepted by the United States; but better counsels prevailed, and the amount was at length paid.

There was also a question of boundary left unsettled. In the Treaty of 1846, the boundary line at the extreme West was thus described—"the middle of the channel which separates the Continent from Vancouver Island." This itself arose from a compromise. Up to 1818, Britain claimed the land in the west down to the Columbia River, which, at its mouth, was between 46 or 47 degrees N.L., while the United States claimed north to 54 degrees 40 minutes. In 1818, an arrangement was entered into by the two countries that all this territory should be open for ten years to settlement by citizens of either country. In 1824 and 1826, there were attempts to settle the boundary, but they failed—and one presidential election was fought on the cry: "Fifty-four forty or fight." At last, in 1846, a compromise offer was made by Great Britain that the line of 49 deg. should be taken to the ocean, and that the whole of Vancouver Island should be British. This was accepted; and the boundary was fixed and defined as I have already mentioned. When, however, Vancouver Island came to be explored there were found to be not one but three main channels between the Island and the mainland—De Haro next to Vancouver, Rosario next the mainland and Douglas between. Of course, Britain claimed that Rosario should be taken as "the channel"; the United States, De Haro. Between these lay San Juan and other islands, not worth much except as a source of irritation and as affording a possible pretext for war. An American commander, Harvey, occupied the island of San Juan with an armed force. British men-of-war were sent out, and war was perilously near. But common sense prevailed: negotiations resulted in the

joint occupation of the Island for the time being by British and American soldiers.

By the Treaty of Washington, the question was referred for determination to the Emperor of Germany: he decided in favour of the American claim, and you got the Islands. Then, in 1873, the whole boundary was finally settled (except on the Alaska side) by the Commissioners.

Canadians have a story that the compromise of 1846 was offered by Pakenham, the British Ambassador, because he had heard that the salmon in the Columbia River would not rise to a fly; and as a consequence that river, in his opinion, was quite valueless. The "few arpents of snow" which the French gave up without regret found their correlative in a river with salmon so destitute of spirit that they would not take a fly.

* * * * *

Everyone must know of the trouble the seal fishing in the Pacific Ocean is still causing—the trouble was more acute twenty years ago. The United States claimed a sovereignty over the waters of the Pacific and the seal fisheries in that ocean, which Britain (and Canada) refused to acknowledge. Armed vessels were sent by the United States to patrol these waters, and some seizures were made of Canadian vessels. This is the stuff that wars are made of—and it must be recognized that had Britain been looking for war she had pretexts at hand which were more weighty than many upon which long and sanguinary wars have been waged. But the American commanders, far from their government, acted with prudence; and neither people was anxious for an armed struggle. A *modus vivendi* was arrived at: and subsequently a Board of Arbitrators was agreed upon to determine the matters in controversy. By this Treaty of 1892 each power was to name two Commissioners and the King of Sweden and Norway, the King of Italy and the President of France one each, making a Board of

seven in all. One of these was a Canadian Minister of the Crown, and Canadians took much of the burden of the reference. This was the Paris Commission, which awarded \$425,000 to be paid by the United States to the subjects of Britain.

The only part of the international boundary not settled was on the Alaska side. Canada claimed most of the long tongue to the south of the main part of Alaska and running along by the sea. Americans said, "What we have we will hold"—and negotiations came to an impasse. In 1903 it was agreed to refer the matter to a tribunal of six jurists of repute, three to be named by each Government. Two Canadians, three Americans, sat upon this tribunal, and the sixth was Lord Alverstone, Lord Chief Justice of England. This Board sat during the then ensuing summer in London, and gave a decision in which the Canadian members did not concur. But the majority award was accepted, and has been loyally submitted to.

In 1908 a Treaty of Arbitration was entered into at Washington by the United States and Great Britain after the failure of the previous Treaty of 1897 through the Senate refusing to approve. It provided that differences which might arise of a legal nature, or relating to the interpretation of treaties existing between the two contracting parties, and which could not be settled by diplomacy, should be referred to the permanent Court of Arbitration established at The Hague by the convention of July 29th, 1899, provided they did not affect the vital interests, the independence or the honour of the two contracting States, and did not concern the interests of third parties.

Article II provides that in each individual case the parties were to conclude a special agreement defining the matter in dispute, the scope of the powers of the arbitrators and the times to be set for the several stages of the procedure.

It was in conformity with the provisions of this

Treaty that the special agreement was entered into, with the concurrence of the governments of Canada and Newfoundland, for submission to The Hague Permanent Court of Arbitration of questions relating to fisheries of the North Atlantic Coast. The questions arose under the convention of 1818, which gave (Article I) certain rights to the inhabitants of the United States to fish in British waters. This special agreement, signed at Washington, January 27th, 1909, confirmed by interchange of notes March 4th, 1909, set out the matters in dispute, and the contentions of either party.

The Board appointed contained the Chief Justice of Canada and a Justice of United States Circuit Court of Appeals, as well as an Austrian, a Dutchman and an Argentine. Canadian counsel again took part in the presentation of the case of Great Britain, and assumed much of the burden of its preparation.

The result seems to have been satisfactory to both sides, as each claims a substantial victory. "O, si sic omnes."

"Peace hath her victories no less renowned than war"; and can anything be of grander significance than the fact that two nations who are among the most powerful that ever existed, whose whole history is full of deeds of valour on the tented field, who fear no foe and who feel a stain like a wound, have for more than a century found peaceful means for the settlement of disputes, sometimes of a grave nature, and the accommodation of misunderstandings not seldom acute? And questions of very varied character have thus been disposed of. The obligation to pay for runaway slaves and their value, the right to fish in certain waters, and the amount to be paid for fisheries where no such right exists, the value of lands taken by a Government from the citizens of another nation, the determination of River and Channel, the ownership of island and other territory—money, land, national boundary—all have been considered and suc-

essfully considered. For while I do not at all say that I have made an accurate division of various treaties, this, broadly, is the result: Of matters which were peculiarly pecuniary, there were five submitted—two arbitrations were wholly successful and three were not successful. Of matters which were not simply pecuniary, but involved territory or something of that kind, ten were submitted to commissioners—eight arbitrations were wholly successful and two not successful. There were four references to sovereigns, three of which were successful. Therefore, of the nineteen references, thirteen were wholly successful and only six have failed: and this I venture to say is an admirable showing.

How do we now stand? There are three main agreements, the Treaty of 1908 (of which I have already spoken), another of 1909 (the Waterways Treaty of much the same character), and the Rush-Bagot Convention of 1817.

The Waterways Treaty was signed January 11th, 1909; it provides for the establishment and maintenance of an International Joint Commission of the United States and Canada—three appointed by each government—which commission should (Article VIII) have jurisdiction over and pass upon all cases involving the use, obstruction or diversion of the waters between the United States and Canada. Article IX contains an agreement that all matters of difference between the countries involving the rights, obligations or interests of either in relation to the other or to the inhabitants of the other along the frontier, shall be referred to this commission for inquiry and report. Article X provides that any question or matter of difference involving the rights, obligations or interests of the United States or of Canada, either in relation to each other or to their respective inhabitants, may be referred for decision to this International Joint Commission. If the commission be equally divided an umpire is to be chosen in the man-

ner provided by Act 45 of The Hague convention of October 18th, 1907. This may be called a miniature Hague tribunal of our own, just for us English-speaking nations of the Continent of North America. And it goes further than the Treaty of 1908, as will be seen by reference to its provisions.

The Rush-Bagot arrangement arose in this way: during the war of 1812 some damage had been done and more annoyance caused by armed vessels upon the Great Lakes. The Treaty of Ghent did not provide that such armed forces should not be kept up; but it became apparent to both sides that it would be well strictly to limit the number and quality of armed vessels upon the fresh waters between the two countries. After some negotiation notes were interchanged, April 28th and 29th, 1817, containing the "Rush-Bagot convention," which notes contained an agreement by one and the other party limiting the naval force to be kept on the lakes to a very few: on Lake Ontario, one vessel; on the Upper Lakes, two vessels; on Lake Champlain, one vessel; none of the vessels to exceed one hundred tons burden, and each to have but one cannon of 18 pounds. It was agreed to dismantle forthwith all other armed vessels on the lakes, and that no other vessels of war should be there built or armed; six months' notice to be given by either party of desire of annulling the stipulation.

The arrangement was, after some delay, submitted by the President to the Senate, and that body in 1818 approved of and consented to it. I understand that constitutional lawyers in the United States—and all lawyers in the United States are constitutional lawyers—are not agreed as to the necessity for the President to lay this agreement before the Senate or for the Senate to approve of it.

It has been strictly observed, except where the consent of Canada has been obtained to trifling varia-

tions from its terms, variations more in the letter than in the spirit.

The understanding was, however, in great danger in 1864. The Minister of the United States in London was instructed in October of that year to give the six months' notice required to terminate the agreement; and Mr. Adams did so, with the subsequent approval of Congress. Before the lapse of the time specified, however, matters on the lakes had taken a different turn, and the United States expressed a desire that the arrangement should continue and be observed by both parties. This was acceded to, and ever since the convention has been considered in full force.

But there remains one thing more to mention. At a recent meeting of the American Society for the Judicial Settlement of International Disputes, the President of the United States gave utterance to an epoch-making statement—I have always thought that the President of the United States of America has the greatest power for good or ill of any man upon the face of the earth—and in this instance the President rose to the height even of his great opportunity. Mr. Taft said in substance: "There is no reason why every international question should not be submitted to judicial arbitrament, whether it be a question of money or of territory or of national honour." Mr. Taft has since that time, amid the harassing cares and multitudinous labours of his great office, continued to press on the adoption of arbitration methods. His efforts have been recognized and seconded by statesmen and churchmen in the mother country, and in Canada.

But few discordant notes are to be heard. Of course, the "fire-eater" is not dead, nor the pessimist, nor he who can walk only *per vias antiquas*, while the fool we have always with us. We hear that wars are necessary to keep down population, although the same argument is not advanced for famine. . . .

. . .—that war is needed to awaken and keep

alive valour and masculine virtues generally, although those who know most about war know best the absurdity of the argument: there is more valour in one day of attendance upon the sick in an epidemic than in a month of active warfare. I undertake to find ten men to face bullet or bayonet for every one who will face smallpox or malignant fever.* We are told that questions of national honour cannot be arbitrated, and that if any nation were to fire a shot at a peaceful ship of another, war must ensue, although Britain did not suffer in the eyes of the world or in her own, because she submitted to international arbitration when her peaceful fishermen were shot down on the Dogger Bank; that a man does not go to law when someone assaults his wife, as though that justified him in stealing the other's fish—or as though the circumstance that some outrage might be so gross that law would be forgotten, furnished an argument against law in general.

All these objections will, in the long run, fail: and the objectors will—must—suffer defeat. The brute, the tiger, must die, for what is war but a survival of the brute within? Whether man was evolving up from the lower animal or devolving down from a state little if any lower than the angels when he first made his appearance as man, I shall not discuss in the presence of learned theologians and accomplished scientists—we in Ontario are having our little troubles over questions of this kind, and I do not propose to get into hot water in New York State if I can avoid it. One way or the other, he was but little removed from the brute. He had the weapons of the brute, the tooth and claw—and he had adopted improved weapons, the club wielded by brawny arm, and the missile stone projected by strong and deft

* . . . ὡς τρις ἂν παρ' ἀσπίδα
 στήναι θέλοι' ἂν μάλλον ἢ τεκεῖν ἅπαξ.
 —Eurip. *Medea* ll. 250, 251.

hand. He was judge of what he would have, and of what he would not have: and wife and child and neighbour were kept in order by the tooth and claw, the club and stone. And then prevailed

. "the good old rule,
. the simple plan,
That they should take who have the power
And they should keep who can."

That is anarchy, the state that is spoken of in the good old book, "In those days there was no King in Israel, but every man did that which was right in his own eyes."

In affairs relating to the sept or clan, it was soon found that this would not do—that that sept or clan would die which allowed the rule of might alone to govern. A house divided against itself cannot stand.

Accordingly, public opinion began to have its effect. The tremendous power of public opinion in a primitive community no one who has not lived in or closely observed such a community can appreciate. Gradually it became a custom for disputes between individual and individual in the same clan or sept to be referred for decision to some independent tribunal—whether the chief who spoke "themistes" given by the god, or the priest also inspired by the god, or companion warrior. Such a tribunal, if temporary and for a special case only, is a board of arbitration; if permanent and for all cases, a Court—call it by what name you will. The more recourse was had to such tribunals and the less to club law, the more civilized the nation. All nations who can be called civilized have long grown out of the habit of allowing any man or body of men to assert and maintain by the strong hand what they conceive to be their right.

And this, although public opinion will permit a gross insult to be resented and physically punished on the spot.

Now man not far removed from the primitive state applied his club law to affairs international

as well as domestic—the rule was co-extensive with his relation to fellow-man—“fellow-human being” I mean. For woman did not escape the universal law; she suffered from the brutal whim of her savage mate. In some lands it is still laid down as a principle—

“A woman, a spaniel, a walnut tree,
The more you whip them, the better they be.”

The neighbouring nation like the neighbouring man had to be met with club and stone: and it was the God of Battles who was the God of the Nations.

It is a somewhat curious fact that it is in what relates to the nation that man is most conservative. Religion itself is made a department of national conservation—and every form of religious observance is carefully preserved in the ancient form. When the people at large have thrown away the stone knife and replaced it with one of bronze or iron, the priest cannot do the same: the time-honoured stone must still be used. Sacred things are not to be trifled with: and no revised version of any ceremonial or book of doctrine is to be tolerated.

* * * * *

So in other matters affecting the State—the elaborate ceremony and formality is retained.

When men got over deciding private rights by club law within the nation, they could not take the logical step of doing away with club law in international disputes. For what is the battle-axe, the mace, the sword, but an improved club—the arrow, the Gatling bullet, but a form of missile, an improvement upon the stone?

I am often reminded of the little poem of Sam Walter Foss, so well known and so pat:

“One day through the primeval wood,
A calf walked home, as good calves should,
But made a trail all bent askew,
A crooked trail, as all calves do.

“Since then two hundred years have fled,
And, I infer, the calf is dead.
But still he left behind his trail,
And thereby hangs my moral tale.

“The trail was taken up next day
By a lone dog that passed that way;
And then a wise bell-wether sheep
Pursued the trail o'er vale and steep,
And drew the flock behind him, too,
As good bell-wethers always do.

“And from that day o'er hill and glade
Through those old woods a path was made:
And many men wound in and out,
And dodged and turned and bent about
And uttered words of righteous wrath
Because 'twas such a crooked path.

“But still they followed—do not laugh—
The first migrations of that calf,
And through this winding woodway stalked
Because he wobbled when he walked.

“This forest path became a lane,
That bent and turned, and turned again;
This crooked lane became a road,
Where many a poor horse with his load
Toiled on beneath the burning sun,
And travelled some three miles in one,
And thus a century and a half
They trod in the footsteps of that calf.

“The years passed on in swiftmess fleet;
The road became a village street;
And this, before they were aware,
A city's crowded thoroughfare;
And soon the central street was this
Of a renowned metropolis;
And men two centuries and a half
Trod in the footsteps of that calf.

“Each day a hundred thousand rout
Followed the zigzag calf about;
And o'er his crooked journey went
The traffic of a continent.
A hundred thousand men were led
By one calf near three centuries dead;

They followed still his crooked way
And lost one hundred years a day—
For such reverence is lent
To well-established precedent.

“A moral lesson this might teach,
Were I ordained and called to preach:
For men are prone to go it blind
Along the calf paths of the mind,
And work away from sun to sun
To do what other men have done.

“They follow in the beaten track,
And in and out, and forth and back,
And still their devious course pursue,
To keep the path that others do,
But how the wise old wood gods laugh
Who saw the first primeval calf!
Many things this tale might teach,
But I am not ordained to preach.”

So it is—and the way of man with his fellow-man is alike conservative. And it may cost as much effort to turn men away from the old methods of international dealing as from the old ways of communication from place to place.

But of this be well assured. The city may continue to have her crooked streets, because they were crooked when her world was young; but the old manner of dealing of man with man must inevitably come to an end. For “Thus speaketh the Lord of hosts—show mercy and compassion every man to his brother.”

The splendid services to the cause of peace rendered by the late President of this nation are followed by the still more splendid services of Mr. Taft, enthusiastically supported as he is by statesmen of both sides of politics—and the people of the United States may well be proud that the first practical steps towards international peace throughout the world are made within and by their nation.

The Prince of Peace cometh—perhaps not to-day or to-morrow, but He must needs come—and “Blessed are the peacemakers: for they shall be called the children of God.”



