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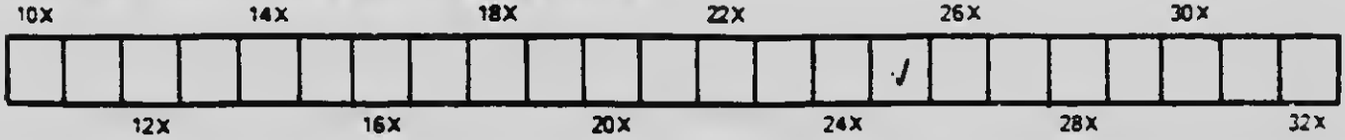

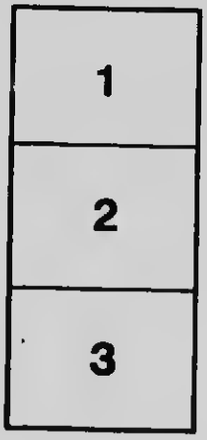

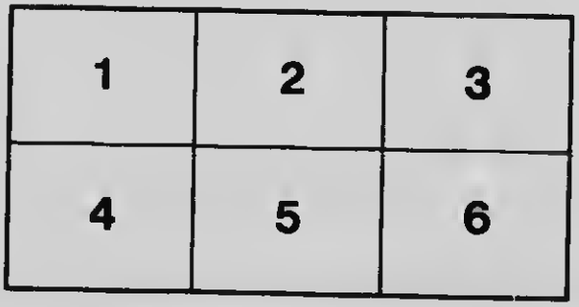

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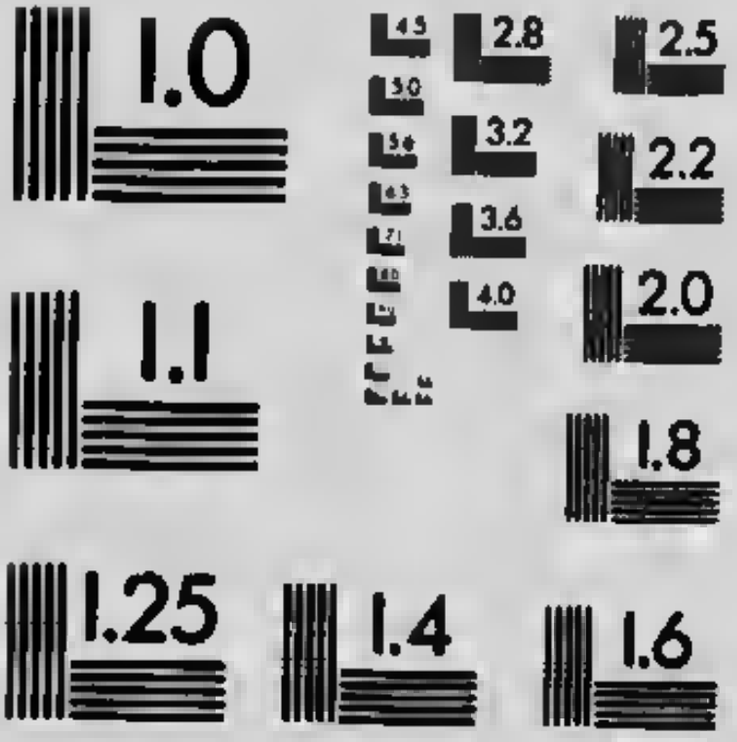

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The Century of Peace and Its Significance

The Honourable William
Renwick Riddell, LL.D., Etc.
Justice of the Supreme Court of Ontario

April the Seventh
Nineteen Hundred and Fifteen

The Century of Peace and Its Significance.

The Honourable William Renwick Riddell, LL. D., etc.,
Justice of the Supreme Court of Ontario.

April 7, 1915.

Some weeks ago I received a request from the Women's Canadian Club of this city to deliver before them the address I had given before the Oberlin College, Oberlin, Ohio, a short time previously. It is needless to say that it was a great pleasure to accede to the request; it must be a delight to every true Canadian to know that our women are not behind their brothers in Canadian sentiment. Then came the invitation from you to speak before your Club—and I know of nothing, in this time of terrible war, which should be of greater interest than the Century of Peace which has existed on this continent, so far as concerns Canada and her neighbor to the South.

HON. WILLIAM RENWICK RIDDELL, LL. D.

What I shall say to you will be in substance what I said at Oberlin, and at the Conservatory this afternoon. The tale is a fascinating one, and does not lose interest from repetition.

The extraordinary spectacle of an international boundary of nearly four thousand miles existing for a century without a fortification and without even a garrison post has rightly attracted the attention of the civilized world. In length, in period of existence and in the pacific relations of those on either side, this boundary line is unique, the miracle of the nations and of the ages. How has this peace been preserved?

Within the past few months, I have taken part in the celebration at Plattsburgh and New Orleans of noteworthy battles; I said at these places that the battle of Plattsburgh made peace possible and the battle of New Orleans made it palatable, and therefore permanent. I have no doubt that these statements are wholly true, but they are not all the truth, for very much more than battles went to both the birth and the long life of that peace.

The length of this remarkable and unexampled boundary rests upon geographical reasons, its period of existence and the relations between the peoples on each side of it, upon the characteristics of the peoples, their ideal of life and of international conduct.

Much has been said—not too much—of the identity of the language of the two peoples.

We are told by those who should know that no one can understand the genius of a people who cannot think in their language and speak it. There is no little truth in that proposition, strange as it seems at first hearing. For myself, reading but not speaking German, I find it impossible even to follow the reasoning of some of the Apologiae recently put forth from that land and I hope I fail to understand precisely what the Germans desire to attain through this war. To show that I am not singular in this incapacity, let me quote what has been recently said of and by Charles Francis Adams, an American of the Americans, a real statesman and scholar of the highest type. In the New York Evening Post I find the following written immediately after his death: "He was intensely alive to all that was going on in the world. Needless to say, the European war set all his fibres tingling. His general position of hostility to the Germans was made known in letters to the English press. They were naturally more restrained than his personal talk and correspondence. From a private letter written by him no longer ago than March 13, the following characteristic passage may be taken; it was Mr. Adams' comment upon the assertion that Americans do not understand Germany because they 'cannot think like Germans':

"'Suspecting this in my own case, I have of late confined my reading on this topic almost exclusively to German sources. I have been taking a course in Nietzsche and Treitschke, as also in the German Denkschift, illumined by excerpts from the German papers in this country and the official utterances of Chancellor von Bethmann-Hollweg.

The result has been most disastrous. It has utterly destroyed my capacity for judicial consideration. I can only say that if what I find in those courses is the capacity to think Germanically, I would rather cease thinking at all. It is the absolute negation of everything which has in the past tended to the elevation of mankind, and the installation in place thereof of a system of thorough dishonesty, emphasized by brutal stupidity. There is a low cunning about it too, which is to me in the last degree repulsive.' "

No doubt those who speak the same language understand each other as they could not, did they require an interpreter. But that cannot fully explain why the peace has been kept. Athens and Thebes had substantially the same language; Sparta's was not more divergent from it than Lowland Scotch from English; yet Athens and Thebes and Sparta were seldom at peace *inter se*. Before the Union of the Crowns in 1603, England and Scotland were very frequently at war, but their language was practically the same. Prussia and Austria had to fight out their differences fifty years ago. Our common language enables us to know each other, indeed; and Charles Lamb indicated a profound truth and one creditable to human nature when he said, ' I cannot hate a man I know." But there was more than language.

Identity of descent had some effect, but 1776 and 1860, the Revolution and the Civil War, furnish a conclusive proof that that was not enough. Nor was identity of religion—for witness Austria and France, Britain and Germany.

It was the fundamental conception of international right and duty.

There are only two principles of international conduct worth considering: The first, " Might makes right; Might is Right. I can, therefore I ought and will." The other, " Right is Right. and because Right is Right, to follow Right were wisdom in the scorn of consequence."

The first of these is the principle of primeval man vindicating his claims by his own strong right arm, they " should take who have the power and they should keep who can." No community could exist in which this principle was allowed to continue as the governing principle in matters between man and man; and accordingly within the clan there must needs arise some rule by which right should be determined—Right must in some way appear other than by mere force and violence. Every nation, even the most savage, has such a rule for its members, no nation which has none can endure.

But in international matters, for long no such law was sought or applied. You will remember we learned early in our Latin classes that the original meaning of "hostis" was stranger, out-lander, but that it early acquired the meaning "enemy," as all strangers were accounted enemies. This feeling is not dead, even within the nation. Who does not appreciate the dialogue Punch gives us between two pit-men? "Dost knaw 'im, Bill?" "Na." "'Eave 'arf n brick at 'im, fettle 'im." The foreigner was an enemy against whom everything was permissible, violence and destruction even laudable; the foreign nation had no rights which one's own nation was bound to respect. While International law has arisen and made some advances, it is but a *vain etiolated simulacrum* of law as applied between citizens of the same nation. It has no court which can effectually summon an offending nation, no powerful police to enforce its mandates. Accordingly we must at all times expect that the strong nation may become an aggressor and that sometimes the only right underlying an attack will be might.

The other principle is but an extension to international concerns, of the morality and the rules adopted between individuals: Right is Right.

A course of conduct may be right for several reasons; it may and its opposite not be in accord with the eternal principles of the moral law; or, indifferent ethically, it may be in accord and its opposite not with positive legal precept; or both ethics and law being silent, it may be prescribed by agreement. An act transgressing the moral code, the legal code, the contract, is wrong. The people who commit it may be strong, irresistably strong, learned, wearisomely learned, pious, ostentatiously pious, may make many excuses, explanations, what not—they stand a transgressor and a criminal in the face of Almighty God—or there is no Almighty God.

With Might as the determining principle, the stronger nation demands what it desires, the weaker temporises and ultimately gives up what it must or has that taken from it irrespective of the rights and wrongs. The stronger is the ultimate and final judge of what it is to receive.

Where Right prevails, the matter in controversy may become a subject for diplomatic consideration indeed, and the question is not uncommonly apparently only, "How little can I get off with giving up?" but the substance al-

ways is, "How much should I in justice give?" Might takes, Right gives. With two nations actuated by the law of Right, most matters can be adjusted without much difficulty; if diplomacy fail, the matter in dispute may be determined by some tribunal.

This method is wholly inconsistent with the principle boldly and baldly laid down by an ex-President of the United States that "to a State a favourable verdict by a Court of Arbitration can never be equivalent to a victory won by war." Such a principle is at bottom based upon the hypothesis that war is a good in itself—a hypothesis supposed to be founded on the immutable laws of nature—and human nature.

We have in these days seen it stated, "War is in itself a good thing. It is a biological necessity." "Efforts for peace would, if they attained their goal, lead to general degeneration, as happens everywhere in nature where the struggle for existence is eliminated." "The State is justified in making conquests whenever its own advantage seems to require additional territory." "In fact, the State is a law unto itself. Weak nations have not the same right to live as powerful and vigorous nations."

These propositions smell of the bottomless pit, but repugnant as they are to our sense of right, they are widely intelligible; as is the principle which necessarily flows from them, a principle also most unflinchingly advanced, that the individual exists for the State, not the State for the individual—a recrudescence of the ancient and outworn theory of the Greek to which many of us thought modern civilization had given its quietus.

It seems to me that the course of dealing between the United States and Britain—among the English-speaking peoples—shows that the rules by which they have governed themselves in their international relationships are those prescribed by the laws of justice and right. I do not at all mean that in every case this was so. *Humanum errare est; homo politicus* is not always *homo sapiens;* in too many cases, patriotism, always unjust, has misled the statesmen on one side or the other; "My country, right or wrong," is a convenient rule to follow in peace as in war, and those in authority have not always been "too bright and good for human nature's daily food." And, too, while our methods of choosing rulers are as good as any yet devised, popular opinion is fallible, mistakes are made, the

fool ye have always with you, and one fool can do more mischief in five minutes than ten wise men can set right in a year.

Sometimes, indeed, mistakes have been made by reason of the pace with which operations must necessarily be carried on in time of war. Sometimes the rights of the belligerent have been placed a little too high, those of the neutral a little too low.

Outside of my window at Osgoode Hall are drilling day by day from dawn to dark the flower of the youth of Canada, destined to become the target of cannon, shot and shell. Many of these I know, many are the sons of my best friends. they are mine own people, mine own flesh and blood; and when I see them preparing themselves for a struggle which must to many mean wounds and agony and to no few death, even I, Judge as I am, cannot look with too critical an eye upon means which may shorten that struggle and save these young heroes for their country even if a neutral may not make quite so much money as he otherwise would or might. In a struggle for national existence a mere question of dollars and cents and neutrals' profits becomes of infinitesimal importance. If to bring a war to a successful termination, neutral trade must be made to suffer, it will, in most cases, be made to suffer. Blood is thicker than water, but it is also heavier than gold.

But we have on both sides drawn the line at the slaughter of unoffending non-belligerants. Sometimes each nation may have unduly harassed the commerce of the other but never has either descended to the murdering of innocent women and children and the destruction of peaceful merchantmen.

I do not assert that either nation has always been blameless in its conduct toward the other. Still less do I say that in dealing with other nations we have always been actuated by the highest or even by proper motives, that we have always been free from the sin of coveting what is our neighbor's or that all our wars were just. I am as little inclined to boast of the Opium Wars as an American of the Mexican expedition seventy years ago.

But *exceptis excipiendis* and speaking generally, I have no hesitation in saying that both nations have, in their dealings with each other, sought the right; the right whether declared by the law of God or the international law of human convention or determined by previous agreement. A

scrap of paper where a name was set we have held "as strong as duty's pledge or bonour's debt." Unless I am wholly mistaken, it is precisely this ideal of international conduct which has preserved for us the peace for a hundred years.

It is rather remarkable that very much of the diplomacy was in reality a commentary on the written word of Treaty. The substantive Treaty of Peace, September 3rd, 1783, had laid down as one boundary the River St. Croix. No lines were drawn on a map to indicate what river this was, no note made by the commissioners as what they meant; and at least two rivers might reasonably be considered to bear the name. In the United States, the feeling was as strong then as now, that "no foot of American soil can pass from under the starry flag"; Britain had for generations said as she now says, "What we have, we hold." All the elements existed for "a just and necessary war"; but the two nations thought it a question of fact to be determined by judges, and so, most tamely—some fire-eaters said, most ignominiously—restrained their armed forces and submitted the matter to three lawyers. David Howell, Judge of the Supreme Court of Rhode Island, and Thomas Barclay, of Annapolis, Nova Scotia (a pupil of John Jay's, who had remained loyal to his sovereign and his flag, and when the cause was lost, had cheerfully passed from his native land into Nova Scotia and taken up life afresh), were chosen. They two selected as the third, Egbert Benson, formerly a judge of the Supreme Court of New York, and afterwards judge of the Circuit Court of the United States, because he was "cool, sensible and dispassionate."

This board illustrates the wise practice of selecting as commissioners those who were skilled in interpreting written documents. A very great part of the lawyer's duty is to interpret that which is written—in Constitution, in Statute, in contracts and in the decisions of the Courts. No one should be better fitted to decide questions of disputed construction than lawyers; and consequently lawyers, whether judges or otherwise, have almost invariably been chosen for that function.

At that time as at all times, there was a party opposed to peaceful determination of disputes. Can you not see the indignation, hear the outraged cry of true patriots on either side of the Atlantic at this "mollycoddle" way of determining a question of national territory? For

how could any true lover of his country hear to have her rights determined by anyone who is "cool, sensible and dispassionate"? Why not adopt the easy code: "I wanted that land and I took it"?

This was before the war of 1812, which was brought to an end by the Treaty of Ghent, December 24th, 1914.

In this treaty the commissioners agreed to the terms of the *status quo ante bellum*. There were, however, a few matters in dispute which they were not able to determine, and which, in the interests of peace, should be determined. Thereafter the international relations of the two peoples are largely a commentary on the Treaty of 1783, the Treaty of Ghent and the later Treaty of Washington of 1871.

The precise position of the boundary line has been in controversy more than once. Down in Passamaquoddy Bay there were some islands claimed by both the province of Nova Scotia and the state of Massachusetts, a splendid chance for war for "inalienable national territory." The true ownership depended upon the interpretation of the Treaty of 1783; and the two governments determined to leave the matter to two lawyers. Thomas Barclay was one —him we have already met; the other, John Holmes, who had served several terms in the Massachusetts Legislature, and who was, when in 1820 Maine was admitted as a State of the Union, selected to represent her in the United States Senate. These two, like sensible men, gave up each a part of his individual opinion, and divided the islands, giving Moose, Dudley and Frederick Islands to the United States and the rest along with the Grand Manan to Nova Scotia. No word of complaint has ever been heard raised against the decision unless we are to credit the story that President Taft thought a few years ago that it would have been infinitely better had Moose Island not been awarded to the United States.

Then the boundary at the Great Lakes was not quite certain; and again Commissioners were appointed to settle it. Anthony Barclay (son of Thomas, whom we have met and shall meet again), took the part of British Commissioner in the place of John Ogilvy, who died at Amherstburgh, Upper Canada, from a fever contracted in the discharge of his duties. Peter Buel Porter, who had practised law at Canandaigua and afterwards had been a very competent commander in the war and who was to be Secretary for War in John Quincy Adams' cabinet, was the other.

They made an award at Utica, in 1822, wholly satisfactory then and now to all parties.

A very difficult question of boundary still remained, "The North-eastern Boundary." The Treaty of 1783 spoke of the "Highlands," and the two nations could not agree on where the "Highlands" were. Thomas Barclay and Cornelius P. Van Ness, afterwards Chief Justice and Governor of Vermont, who were appointed Commissioners, were unable to agree; and the question was left, in 1827, to William, King of the Netherlands. His award in 1831 was not satisfactory to the United States, and Britain agreed not to insist upon it. After considerable negotiation, Lord Ashburton and Daniel Webster agreed upon a line (in 1842) which has been acted upon ever since. This line was and is exceedingly awkward for Canada, an elbow of Maine sticks up into her ribs, and her Intercolonial Railway has been compelled to make a long detour to avoid American territory, while there is no corresponding advantage to the United States. But the line was agreed upon and the matter is settled.

This controversy illustrates, it seems to me, our manner of thought. The boundary as defined by the Treaty of 1783 neither party at any time attempted to get away from "Scrap of paper" as it was, it was a contract, and therefore sacred and binding. When it was found that the words employed were not sufficiently definite to make clear the precise boundary intended, there was still no threat of war, much less forcible entry. Two commissioners were selected, lawyers of eminence, to find out exactly what was meant. They disagreed—a dissgreement which might quite naturally arise from national feeling and prejudice: it was left to a foreigner—a foreigner in such high position that no thought of corruption or dishonesty could arise. His award was claimed by the United States as not having been made on the proper basis. Britain, in view of this claim, instead of insisting on the award (as technically she might), agreed to disregard it. I have thought that her conduct on this occasion may well be likened to that of the United States but last year. Britain claimed that the United States had bound itself not to give any advantage to its own ships in the Panama Canal; the United States took another view of the treaty and made regulations by which certain ships of the United States had an advantage. But on consideration of the view taken by Britain of the treaty, it reversed its

action and without assenting to the validity of the British contention, acceded to it because the other party to the treaty thought that was what the treaty meant; nor was the plea of change of circumstances, earnestly pressed as it was, even listened to. May I, as one who knows something of the American people, say that to my mind they never rose to a higher plane of international good faith than when they said to Britain, "You thought we meant that, so let it be"! But as a Briton I venture to point to a precedent for this action, eighty-five years before, little known and little thought of.

One school of politicians would say that both the nations were fools. What say you?

Some look upon the act of giving an advantage to American vessels in the Panama Canal as a "Yankee trick." Well, in 1871, by the Treaty of Washington, Article 27, the Queen agreed to urge the government at Ottawa "to secure to the citizens of the United States the use of the Welland, St. Lawrence and other canals in the Dominion on terms of equality with the inhabitants of the Dominion." We did make uniform tolls for all ships, American and Canadian—and then repaid the Canadians their tolls! Was this a "Canadian trick"? We had the grace to be ashamed of our sharp practice and to repeal the obnoxious provisions so as to put all on the same level. So did the Americans last year.

This was by no means the end of the territorial disputes.

The international boundary was, as we have seen, settled by Commissioners at the east and through the great lakes and international rivers through the Lake of the Woods. In 1818, from the Lake of the Woods to the Rocky Mountains the parallel of 49° N. L. was agreed upon through diplomatic means; but west of the Rockies the line was in dispute. Britain claimed as far south as the mouth of the Columbia River, between 46° and 47° N. L., the United States as far north as 54° 40′. The convention of 1818 allowed the citizens of each nation to settle in the disputed territory. Attempts were made in 1823 and 1826 to fix the line, but in vain. In 1827, the arrangement as to settlement by either people was renewed indefinitely. Polk's election was fought on the slogan "[illegible]y-four forty or fight." Polk was elected, but no fight came on, although Britain firmly refused to assent to fifty-four forty. In those days and in that country pre-election pledges were not invariably im-

plemented, as of course they are in our day and in our land. Both parties thought it better to compromise and (in 1846), they agreed that the line of 49° N. L. should be extended to the Pacific. Of course the jingoes on either side were outraged, each government was charged with craven submission to unjust demands of the other; true national feeling was again dead and the doom of the empire—or the republic—was sealed. The story is told—I do not vouch for the truth of it—that Pakenham, the British Ambassador at Washington found that the salmon in the Columbia River would not rise to a fly, and thenceforward considered the river of little value.

Even yet the whole trouble was not got rid of. The Treaty of 1846 had fixed the line at 49° "westward to the middle of the channel which separates the continent from Vancouver Island, and thence southerly through the middle of the said channel and of Fuca's Straits to the Pacific Ocean." Geography has a way of laughing at diplomacy. There were three channels, any of which might fairly be called the main channel. Britain claimed that nearest the mainland, the United States that nearest Vancouver Island, and the intervening islands were the bone of contention. In 1869 it was arranged to leave the dispute to the determination of the President of Switzerland, but the Senate refused to agree—the irritation which arose during the Civil War had not been allayed. British subjects settled in San Juan Island; General Harney landed an armed force and took possession of it for the United States; Britain had men-of-war available, and only prudence and forbearance prevented an armed conflict. But there was no war; a peaceful joint occupation was agreed upon, and in 1871 the Emperor of Germany was asked to decide the channel. This he did the following year in favor of the United States, and Britain withdrew.

Then came the last dispute as to territory. The boundary of Alaska was for some time in doubt. Joint surveys agreed upon in 1892 did not satisfactorily determine the true line, for it was not a matter of surveying. At length, in 1903, the determination of the boundary was left to six "impartial jurists of repute" who made an award in the same year. The award was not received with much favour in Canada; much complaint was made that some of the American commissioners were not "impartial," and that the award was not in fact judicial. No objection could be

taken to the British commissioners—Chief Justice Lord Alverstone, Mr. Justice Armour, of our Supreme Court (who had been Chief Justice of Ontario), and Sir Louis Jette (who had been Chief Justice of Quebec). President Roosevelt appointed Senators Root, Lodge and Turner, none of them a Judge. That I may be perfectly fair I quote from Hon. John W. Foster, who was the agent of the United States on this occasion. In his "Diplomatic Memoirs," 1910, Vol. II, pp. 197, 198, he says : " The Canadian government complained * * * * that the members nominated by the President * * * * were not such persons as were contemplated by the treaty, to wit : ' impartial jurists of repute' * * * * It was alleged that one of the American members had expressed himself publicly some time previous to his appointment as strongly convinced of the justice of the claim of his Government. It was also objected that no one of the three was taken from the judicial life and that they all might be considered as political, rather than legal, representatives of their country. The editor of Hall's International Law (Edit. 1904), refers to the selection of the American members as ' a serious blot on the proceedings.' " Mr. Foster does not attempt to justify the act of the president. I agree with the editor spoken of and think that the great exponent of the "square deal" could not have done a more dishonest and unfair act. I have never heard an American justify it. It has been explained (whether truly or not, I cannot say), by the alleged fact that it was only by promising such appointments, that Roosevelt was able to get the Senate to pass the Treaty. However that may be, our own subsequent conduct furnishes the Americans with a fair retort. On the death of Mr. Justice Armour, Britain appointed in his stead, Mr. Aylesworth, who had been engaged as counsel in the very case, and who, deservedly high as he stood, and stands in public estimation, could scarcely be considered more impartial than was any of the Americans.

Let me pause here to say a word as to the conduct of the United States throughout the century. We have a small but active class who make a practice of girding at the " Yankees," as they call them. In my boyhood, we resented the arrogation to themselves by the people of the Republic, of the appellation " American." We were born in, or at least lived in, the continent of America equally with them, and equally with them were entitled to be called American. But Canada has come to her own, has become

conscious of her nationality and of her great destiny, and the name Canadian has become a badge of pride. If one searches the records of the past he will find that the people of the United States have always been called Americans by those of the mother country—and I for one am quite content with the name Canadian, leaving to our friends to the south the name American, in common with the other non-Canadian occupants of this continent. The class I have in mind almost invariably say "Yankees," when they mean "Americans," and can generally be identified by that terminology, although it is as absurd to call all Americans "Yankees," as it would be to call all British "Scotsmen." That class make it a point to speak of Yankee dishonesty in our international relations. I have made a careful study of the history of these matters, and while it cannot be said that the United States was generous and brotherly, or went out of its way to show its friendship, the claims made have invariably had some colour of justice, they have not been wanton and gratuitous, nor less well founded than many of our own. And in the appointment of arbitrators, the Alaskan appointment by Roosevelt stands by itself—and probably no one but a noisy advocate of fair play could have made it.

We did object to such a board and the award made by that board; but there never was a thought of disputing its validity or of refusing to be bound by it.

So we have fixed our four thousand miles of boundary without a fight, without the effusion of one drop of blood, and almost without even the lingering remains of a temporary irritation.

The rights of fishing have also been in controversy. By the Treaty of Peace, 1783, certain rights were given to American citizens in the Atlantic fisheries. These were not so much mentioned in the Treaty of Ghent of 1814 (the story is a curious one, but too long to be entered upon here); it was claimed by Britain that after the War of 1812 Americans had no right to fish in British territory, and a rather dangerous dispute arose. In 1818, however, the matter was arranged by diplomacy, and the limits within which Americans might fish were laid down. When the Reciprocity Treaty was made in 1854, the advantages given up in 1818 by the Americans were restored so long as that treaty should be in force; and an international commission was provided for, which should lay off the limits within which

Americans should have the right to fish. In 1866 the United States denounced the Reciprocity Treaty and these rights were lost. But who ever heard of a fisherman who could distinguish between his neighbor's pond and his own? Or who, when his own waters were fished out would be content to fish away there without trespassing? Or who would cease fishing where he had been accustomed to fish, on account of change or ownership or any such trifle as that? Not unnaturally the American fishermen trespassed, and this caused no little irritation between the two peoples. In 1871, by the Treaty of Washington, the amount to be paid by the United States for this improper and illegal fishing was referred to three arbitrators; and they in 1877, made an award at Halifax. The amount, five and a half million dollars, rather startled the United States, but it was paid within the time allowed by the Treaty.

The convention of 1818 had given to American citizens certain rights of drying and curing fish, etc., not very definitely expressed; and constant friction arose over these matters. Then there were questions concerning the right of the British Colonies to make regulations as to fishing, bait, etc.; and generally the "fishing on the Banks" was a perpetual subject of diplomatic correspondence and controversy, charges and counter-charges of wrong-doing and unreasonableness. At length it was decided to leave the whole matter to a tribunal chosen from the members of the Permanent Court at the Hague—an American and a Canadian judge, an Austrian professor of law, a Dutchman and an Argentine, all "jurists of repute." Their award in 1910 was so satisfactory that both parties were triumphant, each hailed the decision as a victory for its side, and for once no one thought of "cursing the Court."

All these questions, it will be seen, depended upon the interpretation of written documents, agreements made between the parties which neither party tried to repudiate, but which they interpreted differently. There was, however, another matter not unlike the fishing dispute which did not depend on agreements, but upon rules of international law involving dominion over the open sea. Russia's attempt at ownership of the Behring Sea had been protested against by both Britain and the United States; but shortly after the acquisition of this territory by the United States, legislation was passed at Washington which appeared to assert jurisdiction similar to that which had been claimed

by Russia. This had for its avo ed object the preservation of the fur seals in Behring Sea. Even more definite claims of ownership of this sea were soon made by the United States. Canadian vessels repudiated the authority of the United States and continued sealing in that part of the sea in which they had been accustomed. Some ships were seized, some Canadians imprisoned, some turned adrift in California. When we remember that the seizures were sixty miles from land, the serious nature of the claim to territorial sovereignty is apparent. This state of affairs was intolerable: Canadians would seal, American cruisers would capture their ships and men. Uncle Sam might, if he would, become a nursing father to the seals; but Canadians determined that it was only his own seals he was to control and kept on killing those which swam at large in the sea.

The dispute was a dangerous one, and at any time a rash American Captain might plunge his Government into serious difficulties, or even war itself. *Civis Britannicus sum* is a living maxim and Britain would not allow her sons to be slaughtered. At length in 1892 the matter was left to a board of two Americans, one Englishman, one Canadian and one from each of the countries France, Italy and Norway. Their award was made in Paris in 1893 and proved generally satisfactory. The amount of damages to be paid Canadians, etc., was fixed by two judges, one an American, the other a Canadian; no umpire was necessary, and the amount, nearly half a million, was paid without a murmur.

Before this, when the United States took property of British subjects south of the line 49° N. L. (when the line was agreed upon in 1816), a similar result was arrived at. Some British subjects had peacably settled in the territory south of this line; and for land and improvements of which they were deprived, they asked to be paid. The United States cheerfully agreed to pay, and to determine the amount two Commissioners were appointed. These were such unpatriotic men that they (in 1869), agreed upon the amount without even troubling the umpire, Benjamin R. Curtis. My friend and judicial brother, now Mr. Justice Maclaren, of the Appellate Division of the Supreme Court of Ontario, was secretary to the British Commissioner, Sir John Rose, and speaks highly of the judicial attitude of both representatives.

Mere money claims have sometimes rested on positive agreement, sometimes on the rules of international law.

A very curious dispute arose over one of the terms of the Treaty of Ghent. By Article 1 It was agreed that all territory taken should be restored, without carrying away of slaves or other private property. Many slaves had come within the British lines, attracted by a proclamation which virtually promised them freedom. (It may be remarked *en passant* that it was this conduct of the British commanders which came in for the bitterest comment by Americans, especially those of the south.) These quondam slaves had accompanied or preceded the British forces in their abandonment of American soil, and it was demanded that they should be returned or paid for. The British claim was a perfect example of legal hair-splitting, worthy of a special pleader; but it was *in favorem libertatis*, and a plea of that kind, like a plea *in favorem vitæ*, has always been looked upon with favour in English-speaking courts. There was never any thought of delivering up the poor blacks, but the question of obligation to pay for them was an open one. It was finally left to the Czar of Russia, and he determined in favor of the contention of the United States.

Partly by arbitration of four commissioners, and partly by diplomacy, the amount was fixed at about a million and a quarter dollars. That sum Britain paid and kept the negro

I have always been proud of this chapter of history—we in this Province which is the first in all English-speaking countries (and in the whole world behind only one country and that by but a few months), to abolish slavery, ought to be able to appreciate the conduct of the mother country in paying such a sum rather than send unfortunates who had trusted her, back to the land of the free and the home of the brave, knowing that for them to be brave was to incur torment and death itself, and that only death could make them free.

Long before this, the Treaty of 1783 had stipulated that creditors on either side should meet no lawful impediment to the recovery of the full value in sterling money of all *bona fide* debts theretofore contracted. Some of the States refused to implement this agreement, and British creditors were deprived of their honest claims. The United States could not coerce the States, but they did not repudiate the clause in the treaty—did not say, "We thought we could have this agreement carried out, but we cannot, accordingly we do not consider ourselves bound."

What was said was, " We cannot compel the States to do the honest thing and the thing agreed by us, but we will pay out of our own funds." And they did.

So, too, Britain did not say, " Necessity knows no law, we had to seize your ships to save our nation, and we will not pay." What was said was, " What we did we did in our bitter need, but we had no right to do it, and we will pay the damages."

Britain indeed absolutely refused the demand of Washington that she should pay for some 3,000 negro slaves taken away. " These," she said, " ceased to be slaves when they reached the British lines, and neither by God's law, international law nor agreement are we bound to pay for them." And she did not. Nor did the United States go to war to try to compel her to do so.

Then came the fraticidal war of 1812-14. This is not the time or the place to consider how far it was justifiable or reasonably necessary. Dignified in advance as the Second War of Independence, in its inception it nearly clove the Union in two and it ended inconsequent, leaving nothing decided for which it had ostensibly been begun and carried on. It left behind it a legacy of hate not yet wholly spent, in this Province it put back for more than a quarter of a century her progress, and if it did good to anybody other than a few contractors and government employees, I have not been able to discover an instance.

Inconsequent as it was, the sound judgment of both peoples insisted on it coming to an end and peace began, never, please God, to end.

After the Treaty of Ghent many claims were made by American citizens against Britain for illegal seizures of ships, etc., and by British subjects against the United States for the same causes of complaints, for arrest of British subjects, and the like. These were in 1853 referred to a board of three commissioners. Britain chose Edmund Hornby, a lawyer of standing, who was afterwards Judge of British Courts in Constantinople and Hong Kong; the United States, Nathaniel G. Upham, for some years a Judge of the Supreme Court of New Hampshire. These two tried to induce Martin Van Buren, ex-President of the United States, to act as umpire, but he declined; and then they chose Joshua Bates, a member of the London banking firm of Baring Bros. & Co., but an American by birth, education and allegiance. As matters turned out, each nation got an award about equal to that of the other.

Another and a very serious dispute arose later, which could not be determined by any pre-existing agreement, or even by the rules of international law: there was no such agreement, and the parties did not agree as to the law. A claim was made by the United States for damage due directly, and for still more damage due indirectly, by Britain's conduct during the Civil War in allowing Confederate cruisers to be fitted up in her waters and escape to destroy American shipping. A most unpleasant and dangerous controversy arose, inflamed beyond a doubt by the anger in the United States against the old land for the conduct of her governing classes during the crucial struggle for human liberty. War was in the air more than once but both parties wished for what was right; neither thought it would be better to obtain what was right by means of war; and it ended by the two peoples (in 1871), agreeing between themselves upon the principles which they should adopt as the law governing the case and leaving the determination of the amount to a tribunal of five—an English Chief Justice, an American publicist, an Italian judge, a Swiss advocate and a Brazilian professor of law constituted the Bench; and their award, dissented from it as it was by the British representative, was paid without demur.

By the same treaty (that of Washington, 1871), a Board was formed of three—an English and an American judge, with an Italian diplomat—to pass upon certain claims arising from what was considered the unneutral conduct of Canada, also upon certain claims by British subjects for improper seizure and detention of ships, illegal arrests, destruction of property, etc., by the United States. None of the American claims was held valid.

How do we stand at present? In the first place, we have made it impossible to have immediate naval warfare on our lakes. As far back as 1817 it was agreed that there should be no ships of war upon the international waters. Then the United States and Canada have an agreement dating back to 1909 whereby a permanent Board is formed, composed of six members, three appointed by the United States, three by Canada. This Commission has jurisdiction over all cases involving the use, obstruction or diversion of the international waters; but also all matters of difference between the countries involving the rights, obligations or interests of either in relation to the other, or the inhabitants of the other, along the frontier are to be referred to this

commission for enquiry and report. Moreover, any matter or question of difference involving the rights, obligations or interests of the United States or Canada, either in relation to each other or to their respective inhabitants, may be referred to it for decision. This commission I have more than once called "a miniature Hague Tribunal of our own, just for us English-speaking nations of the continent of North America."

I need not speak of the general treaty of 1908 or of the recent treaty which is meant to delay military operations and to give the nations a chance to consider their dispute in all its bearings.

It is plain—he who runs may read—that we have been so satisfied with the Century of Peace that we are making every effort for its continuance *ad multos annos*. In every way peace has paid. Let no one persuade himself that the war of one hundred years ago did anything to teach the peoples respect for each other or to bring them into harmony. Whatever may have been its effect, if any, in welding the Union together, internationally it was wholly evil, and its evil effects still continue. It was the peace, the ways of peace, which brought us together and made us almost one. What American but finds himself at home in my Canada, what Canadian considers himself a foreigner or an alien in the United States?

What of the future?

I read that Maxim, the great inventor, says that after the present war the United States must fight the victor. I confess scepticism about the United States being forced to go to war with any people. I have heard many times of its being obliged to fight Britain; not many years ago, war with Germany was inevitable (over some nitrates, I think, and later in the interests of Standard Oil): Mexico has been its predestined victim dozens of times; and when no other antagonist is above the horizon, Japan invariably appears.

But Maxim may be right. He is undoubtedly right if that victor, be it which nation it may, hold as a cardinal doctrine that war is good in itself, that war is necessary for the highest development of a nation, or the like accursed creed. Any nation which believes—and does not simply say that it believes—that "the living God will see to it that war shall always recur as a terrible medicine for mankind," will not fail itself to play

the physician and administer the prescription if the Almighty seem not sufficiently attentive to His duty.

And if the victor live the doctrine, Might makes right, the time will surely come when Right will be made by Might; while in the meantime that republic, to which countless thousands have fled for the chance to breathe without the load of military conscription and tax, must in the meantime be ever prepared, paying for that preparation the inevitable price in money, anxiety and the brain and brawn of her sons—those sons, who will thus learn, as no otherwise could they learn, what is meant by the principle, "The citizen exists for the State, not the State for the citizen." If the victor be a nation which loves peace, which will seek peace and insure it, which acknowledges that there are other and higher rights than such as may be given by the will of the stronger, that the moral law is of validity in conduct towards other nations, that the pledged word must be kept, a nation that walketh uprightly and worketh righteousness and speaketh truth in its heart, sweareth to its own hurt and changeth not, then we need fear no war—sum of all the villianies—for when war begins, then hell openeth.

In New Orleans the other day I heard a distinguished officer of the American army urge that children should be taught to fight for their rights, for, said he, "if we do not fight for our rights, we soon shall have no rights to fight for." I ventured then, as I venture now, to say, God forbid that the time should ever come when those of our breed should need to be taught to fight for their rights. But there never was a time when any people of our kind has required to be urged to fight for its rights; we always have been, are now and always will be, all too ready to fight for our rights. That is not the true difficulty or the matter of greatest importance—what is important is to determine what our rights are.

No nation, as no individual, ever existed that can be wholly trusted to determine its own rights; impartiality is excluded in the nature of things; and it is the pugnacious spirit, the spirit which is insistent to fight for rights, which is the greatest danger in our international relations. Any nation that is looking for a fight can always be accommodated. It was the curbing of that desire "to fight for our rights," and the careful determination on principle of what these rights were, which made possible the century of Peace.

Fight for our rights? Undoubtedly—and fight for the rights of others as well, a persecuted France, a tortured Belgium. Please God, the day will never come when we shall be unwilling to spend our last cent, to sacrifice our last man in the cause of human freedom and the cause of righteousness. But in respect of our relations with the people to the south of us, we have never for a hundred years, had occasion to threaten an appeal to arms on either side—the difficulty has always been, how best can be discovered what the respective rights are. In this, as in all else, there has been an occasional mistake, the too belligerent message at the time of the seizure of the Trent; the "shirt-sleeves" dispatch of President Cleveland at the time of the Venezuela troubles. The former was softened at the instance of the Prince Consort, the latter was rather laughed at as the production of a person unacquainted with the usages of good society, and not accustomed to the niceties of diplomatic intercourse. But in the main, each nation has been confident of the sense of justice of the other: each has believed that not only itself, but also the other was wholly convinced that while Might is great, Right is greater, and it is not valour or prowess in arms but righteousness which exalteth a nation. And without fear of successful contradiction I say, that between us, on the whole, and speaking generally, despite a hundred stumbles and falls, there has been fidelity to the pledged word and the dictates of the moral law.

Some of us had hoped that the example of these two peoples would have taught the nations that war is unnecessary. That was not to be. The present terrible conflict may be the last; but if this hope prove in vain, we should not despair; the cause of peace must advance, though, as with the rising tide, there will be receding waves.

Whatever be the fate of others, as to these two peoples I hope and believe that as between themselves they have finally and irrevocably decided there shall be eternal peace; the peace already well begun shall continue forever.

For, if, as we believe, there is a moral Governor of the universe, governing by a moral law; if these peoples have that sense of law which equally with the starry heavens filled the German philosopher with awe—and that is my faith—it is as certain as to-morrow's tide that the English-speaking nations on this Continent, over the Sea and around

the Seven Seas, must in the future as in the past, be firm in the determination that nothing shall break the bond of amity and good will wbich binds them together.

Let us as Canadians as well as loyal Britons, see to it that we are not remiss in any and every effort which will tend to make tbat union strong and lasting—Canadian Clubs can bave no higber or better aim.