Results of the War of 1812-14.

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

Supreme Court of Ontario

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With Compliments of

WILLIAM RENWICK RIDDELL.

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RESULTS OF THE WAR OF 1812-14

Mr. Justice Riddell (Toronto), Justice of the Supreme Court of Ontario, was one of the speakers at the meeting in St. Louis of the American Peace Congress in May, 1913.

Certain of his remarks as reported in the press were taken exception to by the *Army and Navy Journal* of New York, and the following discussion took place.

EDITORIAL IN THE *Army and Navy Journal*, MAY 17, 1913.

We are not quite clear as to the meaning that Justice William Renwick Riddell, of the Supreme Court of Ontario, desired to convey in his address before the American Peace Congress in St. Louis on May 3rd when, according to the press reports of his address, he said, in reviewing the hundred years of peace between the United States and Great Britain, that questions more difficult of settlement than any settled by war had been adjusted peacefully between the two countries. It was the settlement of two great questions by war that made the century of peace possible. We should like to know what greater questions have been decided since 1813 than the question of the independence of the American colonies and the prohibition of British search of American vessels. And it might be well to say that the proclamation of the Monroe doctrine and the bellicose, defiant stand the United States

has taken in regard to it have done much to keep the peace in these hundred years. The American people since the day the Doctrine was first promulgated have never shown a disinclination to fight to maintain it, as was made plain at the time of the Venezuela incident in the second Cleveland administration. The chief disputes between this country and England in time of peace since 1813 have been those of boundaries. In the Civil War period there were the Trent affair and the *Alabama* Claims controversy, both of which had their origin in the war. The disavowal by the United States Government of the act of Captain Wilkes in taking the Confederate commissioners from the British steamer was in line with our demands fifty years before which contributed so largely to bring on the War of 1812. The question of damages growing out of the depredations of the Confederate privateers, built in England, had to do with the relations of a neutral in time of war. It was the War of 1812 that smoothed the way to the peace of these hundred years by making it clear to the world that American ships the world over must be as independent as the ships of any other nation. The gaining of our independence in the Revolutionary War would have been of little moment if we had admitted the right of Great Britain to search American ships anywhere on the high seas for alleged British subjects. Such independence would have been the merest mockery. By serving notice on Great Britain, possessor of the largest navy at that time, we informed other nations that they, too, must keep hands off. The last obstacle to the achieving of complete independence was the subjection of our ships to search by a foreign nation. When that was put an end to as a result of the War of 1812, the United States stood upon the same footing as the greatest nation in Europe. It was these two wars, then, which secured to the United States its rightful place among the nations of the earth.

MR. JUSTICE RIDDELL'S REPLY.

(PUBLISHED IN THE ISSUE OF THE *Army and Navy Journal*, JUNE 7, 1913.)

The Supreme Court of Ontario, Appellate Division,
OSGOODE HALL,
Toronto, May 31, 1913.

To the Editor of the *Army and Navy Journal*:

In your issue of May 17th you refer to an address of mine delivered at St. Louis recently, and you say you are not quite clear as to the meaning of a statement made by me. The statement I did make was: "Almost exactly a hundred years after the beginning of that war questions of considerable difficulty which had troubled the two nations for many years came to be decided. This time a board of judges was chosen. * * * During the intervening century all kinds of questions had been settled by all kinds of arbitrations: for slaves taken by the warships of Britain from American citizens; where Americans might fish and what the United States should pay for Americans fishing where they had no right to; where Canadians might catch seals and what they should be paid for not being allowed to catch where they had a right to; what Britain should pay for her defective municipal laws allowing the escape of the *Alabama*, and many more such questions."

If I had used the language imputed to me, and said that "questions more difficult of settlement than any settled by war"—and such language I have more than once used—it would have been fully justified, if we use the word "war" in the sense of an armed conflict between nations.

Not the most ardent advocate of peace nowadays disputes the right of any section of humanity to assert independence, by force if necessary, granted sufficient cause. But a rebellion is not an international war.

And whether the American people when dissatisfied with their rulers should throw off the yoke at once and by violent means, or should obtain substantial independence gradually by constitutional means, as Canada has done, was wholly for the American people themselves. Whether it is better to be entirely separate or to remain united by a common allegiance with the rest of the English-speaking world is, of course, a matter of opinion—perhaps of taste. But it is an abuse of terms to confound a separation of a nation into two with a struggle of one nation with another; and no one would think of using the advantages obtained by a successful revolt as an argument against peace between nations.

Your other example is, I suggest, still less to the point.

I had not thought that at the present day it was considered, by anyone familiar with the history of the War of 1812, that the right of search claimed by Britain had much to do with that war. That it was made a pretext for the continuance of the war after the repeal of the objectionable Orders-in-Council is certainly true. The whole matter has been thoroughly investigated by recent American historians, and I do not intend to discuss it. Let me cite only one well-known American authority, Woolsey's International Law, 6th Edit., 1890, para. 221, p. 393: "The War of 1812, it is well known, was justified on this pretext after the Orders-in-council had been rescinded."

Grant that it was an object, or even *the* object of the war party in the United States to settle the question, was it settled by the war?

Before the war at all, and in 1806, at the time of Pinkney's treaty (Dec. 31st, 1806), Britain was willing to give assurance that impressment should be resorted to only on extraordinary occasions and under certain precautions, Winsor, vol. 7, p. 481. This was accepted by Pinkney and Monroe, but the treaty never received the approbation of Congress.

After the war had been going on for some time Bayard and Gallatin, the American commissioners, reported to President Monroe the state of public opinion, and " intimated clearly that if the renunciation by Great Britain of the right of impressment was the condition of peace, then peace could not be secured." Winsor, vol. 7, 484. And Monroe instructed the commissioners to omit any stipulation on the subject of impressment if found indispensably necessary to terminate the war. Mr. Adams, one of the American commissioners at Ghent, had drafted an article on impressment, but the British commissioner refused it absolutely, and it was never again mentioned. " Though not a single one of the objects for which the United States avowedly went to war was secured by the treaty, though the impressment of seamen and neutral rights were not so much as named, the return of the peace was hailed with general joy in America, and the commissioners—somewhat to their own surprise—were warmly commended." Winsor, vol. 7, 487.

Nor did Britain abandon her right to seize her own subjects and to search the ships of any nation for them. " The claim was not alluded to in the Treaty of Ghent, nor has Great Britain since abandoned it." Woolsey, International Law, para. 221, p. 393. It is well known that much negotiation took place in Webster's time in 1842 concerning this matter. This great man debated the question with Lord Ashburton, but was unable to procure the slightest concession. See Webster's Works, vol. 6, p. 318.

Nor was it by reason of this war that Britain ceased her practice. After the conclusion of the great Napoleonic wars, it never was necessary for her to fill her ships of war, and she has never since exercised the right of impressment at home.

This question, then, was not settled by war; but while not in form settled, it has been substantially removed from the realm of actuality by the efforts of

diplomacy becoming successful in the various Acts of Naturalization—not war, but diplomacy.

Now what have peaceful means settled? The boundary at Maine, a strip of land half across the continent over four hundred miles wide, Britain's liability to pay for slaves taken from American masters and the amount, her liability to pay damages for allowing the *Alabama* to escape, for allowing the St. Alban's raid, the right of Canadians to catch seals on the high seas, of the Americans to catch fish in Atlantic waters, and many others, any one of which is at least as difficult of settlement as the right of impressment.

If relative importance be the test, is it any more important to determine whether a British captain can search an American ship for British deserters than to determine whether a British sealing ship shall pursue her venture on the high seas at all, or her sailors be taken captive and punished with imprisonment in an American gaol? Or whether an American citizen who had settled upon territory which his country claimed as its own should either become an alien or leave his land, or whether a slave could bid defiance to his American master when he attained the deck of a British ship?

Surely you cannot be serious when you suggest that " the last obstacle to achieving of complete independence was the subjection of our ships to search by a foreign nation." Britain exercised and claimed to exercise no more right against the United States than against any other nation, there was no thought of disputing the complete independence of the United States any more than the complete independence of Spain; nor could the United States have considered the assertion of such a right a challenge to her independence, or she would not have made a treaty of peace without insisting on a repudiation of the doctrine. Neither before nor after the war had anyone the faintest idea of disputing " that American ships the world over would be as independent as the ships of any other nation." For nearly thirty

years the right of search was asserted and, when necessary, exercised, but no one imagined that the United States had not complete independence.

However that may be, I am sure that you join with all peace-lovers in the hope that war will never again break out among the English-speaking peoples, but that the War of 1812-15 will be the last.

WILLIAM RENWICK RIDDELL.

EDITORIAL IN THE *JOURNAL*, JUNE 7, 1913.

JUSTICE RIDDELL'S VIEW OF THE WAR OF 1812.

The letter of Justice William Renwick Riddell, of the Supreme Court of Ontario, which appears in another column of this issue, respecting the editorial criticsm in our issue of May 17th, page 1139, of his remarks at the recent American Peace Congress in St. Louis, seems to have been written largely from the British point of date should consider that the right of searching Ameriview. Justice Riddell is surprised that anyone at this can ships claimed by Great Britain "had much to do with the War of 1812." May we take the liberty of calling the attention of the distinguished jurist across our northern border to one of the most recent of histories, that of the United States Navy published in 1911 by J. B. Lippincott and Company, Philadelphia? This book is the joint work of Capt. George R. Clark, U.S.N., William O. Stevens, Ph.D., Carroll S. Alden, Ph.D., and Herman F. Krafft, LL.B., all of the faculty of the U. S. Naval Academy.

The sixth chapter of this volume is entitled "The War of 1812, Causes and Early Events." The first words of this chapter are the following: "The causes of the War of 1812 were mainly the impressment of American sailors and the restrictions on our trade caused by the British order-in-council and Napoleon's decrees of Berlin, Milan and Rambuillet. The outrages con-

nected with impressment, such as the forcible seizure of our citizens from merchantmen, and especially from the deck of the frigate *Chesapeake* in 1807, rankled most in the hearts of our countrymen." If Justice Riddell will read the histories of the War of 1812 more closely perhaps he will learn that the first gun of that war was fired, not in 1812, but back in 1807, just as the first gun fired in the Revolutionary War is traced by students back to the Boston massacre in 1770. From this Lippincott history we again quote (page 95), this time to illustrate the effect of impressment upon the American mind: "The wrongs committed by the press gangs were brought to a climax by the *Chesapeake-Leopard* affair in 1807. Some alleged deserters from British ships had enlisted on the U.S.S. *Chesapeake*. Britain demanded they be given up. The Washington Government refused, holding they were Americans. The British ships were then ordered to watch for the *Chesapeake* and search her. On June 22nd, 1907, as the *Chesapeake* set sail from Hampton Roads to relieve the U.S.S. *Constitution* on the Mediterranean station, she was spoken by H.M.S. *Leopard*. Capt. James Barron, of the American ship, supposing the message to be of a peaceful character, hove to and received an officer from the *Leopard*, who demanded the men charged with being British deserters. Barron refused to give them up, whereupon the British frigate opened fire, and the American vessel, not being prepared for action, soon hauled down its flag. Only one of the Halifax deserters was found on board, the others having deserted before the *Chesapeake* sailed, but the British took off three other men, all Americans."

Of this seizure the history goes on to say: "The *Chesapeake* affair angered the nation far more than had any outrages on our merchantmen; it was an insult to the Navy, to the very sovereignty of this country. Yet the wavering policy of Jefferson and of Madison preferred a war of words to redress by the sword. It was

not until 1811 that Britain made a formal disavowal of this act by restoring to the United States three of the four men who had been seized—one had been hanged at the yard-arm as a deserter." Immediately after the *Chesapeake* incident Jefferson ordered by proclamation all British ships of war to leave American ports. Then Great Britain retorted by declaring that all ports thus excluding British ships would be treated as blockaded. In retaliation Napoleon announced by his Milan decree that any foreign vessel allowing the British to board her and examine her papers became *ipso facto* liable to seizure. "Some British statesmen," says the history, "tried hard to avert the war. * * * The Prince Regent in answer to popular clamor now did his utmost to avert hostilities, and the British orders against American commerce were accordingly revoked early in 1812. But American patience had been exhausted and the good intentions of the Prince Regent were too late."

Has Justice Riddell forgotten also the fight between the U.S.S. *President* and H.M.S. *Little Belt* on May 16th, 1811, brought on by the British impressment? The history describes the declaration of war by the United States, and after enumerating the causes of the conflict says: "And last and most important of all, impressment." In a message to Congress on June 1st, 1812, President Madison recommended a declaration of war against England. In this message was set forth a list of the grievances of the United States against Great Britain. "The chief grounds for this recommendation of war by the President," says the International Encyclopedia, page 118, vol. 17, "were the impressment of American seamen, the extension of the right to search to include United States war vessels, the 'paper blockades' established by the British orders-in-council, and the alleged efforts of Great Britain to persuade the North-Western Indians to attack the Americans." Does Justice Riddell believe that President Madison thought that the right of search claimed by Britain did not have "much to do with the war"?

Of the results of the war the Lippincott history says: "Though Great Britain maintained her prescriptive right to impressment she did not later continue her practice in this regard." Justice Riddell is too well informed on history for us to presume to call his attention to the fact that treaties are compromises, except where one of the parties to the war is entirely prostrate, as in the Franco-Prussian war of 1870. Concessions were made by Great Britain in the Ghent Treaty which probably justified the American commissioners in not insisting upon the impressment feature of the American protest, especially as the collapse of the Napoleonic *regime* had left England free to send large forces against the United States. The fact that impressment was not mentioned in the treaty, of which Justice Riddell makes so much, is of little moment, since the feelings of the American people were never again outraged by searchings of their warships as they had been before the war. There never again was an incident like that of the *Chesapeake* and *Leopard*. Justice Riddell says this change was due to the alteration in the method of recruiting which the British navy experienced with the downfall of Napoleon. This may well be true, but who shall say how large a part the War of 1812 had in bringing England to see the unwisdom of impressment and of the obnoxious system of press gangs?

It seems to us that a study of American history will prove three things to be true: (1) That impressment was a controlling influence in bringing on the War of 1812; (2) that the searching of American ships at sea was an insult to the sovereignty of the United States, and (3) that after the war the British gave up their practice of searching American ships and eventually the custom fell into complete disuse. We are told that the war did not settle impressment because Great Britain still maintained her right to employ it. The United States did not care a fig about the "maintaining" of the right; what it did object to, however, was the enforcing of that "right," and the war put an end to that.

REPLY OF MR. JUSTICE RIDDELL, PRINTED IN PART IN THE *JOURNAL* OF JULY 19, 1913.

(Room Could Not Be Found for the Whole.)

Supreme Court of Ontario, Appellate Division.
OSGOODE HALL,
Toronto, June 17th, 1913.

The Editor of *The Army and Navy Journal*, New York:

DEAR SIR,—Your interesting editorial of the 7th of June induces me to trouble you with another letter.

The object of my former letter was to explain what was meant by the statement "that questions more difficult than any settled by war had been adjusted peacefully between the two countries." In justifying that statement, I challenged your assertion that the war had brought about "the prohibition of British search of American vessels."

I had not thought that my opinion as to the causes of the War of 1812 was of the slightest interest or moment; and had not intended to express any opinion. Whatever that opinion is, it is derived almost wholly from the study of American authors and the original documents referred to by them. The English writers, with practical unanimity, seem to regard that war rather as an unpleasant and unfortunate episode in the midst of a life and death struggle for national existence and freedom; while an Upper Canadian is, by reason of his country having been a seat of war, prone rather to magnify than to minimize.

Whether those Americans, by no means few in number or insignificant in position, whom writers like Lossing assail, and those like Mahan reason with, and who contended that the ostensible causes of the war were not the real ones, were right, I do not discuss. It seemed to me that that school was somewhat in the ascendant

in the United States to-day amongst historians; but I may easily be mistaken.

Your remarks upon my supposed opinion make it not improper or egotistical to say that the inclination of that opinion is to take the allegations of the United States at their face value. The only doubt as to the accuracy of that opinion (which I once held most firmly), was produced by American writers and the original documents referred to by them. I shall, as soon as possible, examine the Naval History you kindly refer me to, and I unfeignedly wish the authorities produced in that work may banish any doubts I may entertain. Of course no judgment that is worth anything can be either formed or changed by the mere opinions of writers, however eminent; original documents by those who lived before or during the war must form the means of judgment.

For all purposes of this discussion, I fully accept your proposition that the impressment of American seamen was an efficient cause of the war. This enormously increases the force of my contention as to its futility. A mere pretext can be abandoned without much comment, but what of a real and substantial cause?

Neither did I assume to justify the British claim to impress Americanized sailors, much less some of the instances of the exercise of the supposed right. What I did and do combat is contained in your statement,—"The last obstacle to the achieving of complete independence was the subjugation of our ships to search by a foreign nation. When that was put an end to as a result of the War of 1812, the United States stood upon the same footing as the greatest nation in Europe." I suggested that the former statement could not be seriously meant; but, of course, the accuracy of the statement must depend upon the meaning to be attached to the word "independence," and every nation has a right to define the word as it pleases. It does not seem to me that the independence of the United States was any

more menaced by the exercise of the right of search by Britain than the independence of Britain was menaced by the United States searching and seizing British vessels sealing on the High Seas. But I most cheerfully admit that that may be a matter of opinion; and I do not here controvert your contention.

The statement that " that was put an end to as a result of the War of 1812 " is the only one I intend to contest; and in doing so I ask you to believe that I am sincerely desirous of determining the exact fact. I have no wish for controversy for controversy's sake, and certainly none to take away from the United States any honour to which it is entitled. Nor am I a peace-at-any-price man. War, in my view, is unhappily sometimes not only a right but a duty; and I shall be more than glad to find that this war did really settle some international question of dispute, and that the valuable lives lost and immense treasure expended were not wholly thrown away.

It may be of advantage to see the exact situation of affairs at the beginning of the war. In the further discussion of this matter, as in the former letter, I make use of the works of American authors of undoubted standing and patriotism, chiefly Mahan's " Sea Power in its Relation to the War of 1812, Boston, 1905."

In considering the practice of impressment of seamen one should get rid of the idea that it arose from sheer arrogance. The claim depended on several principles. The first, that no English-born subject could, without leave of the Crown, absolve himself from his allegiance. This is part of the Common Law of England, the common heritage of Englishmen and Americans, and the right is preserved by Magna Charta (cap. 42), the Great Charter of the liberties of the race. The Supreme Court of the United States from the first, and as late as 1830, declared this to be undoubted law; and the American text-writers all agree in that view. This principle has been abandoned by Britain by express

Statute, but only in 1870. It is not very unlike that principle, thoroughly disputed, but still more thoroughly maintained, that a State cannot leave the Union. Some millions of American citizens about fifty years ago thought they could absolve their allegiance to the United States and set up a new nation of their own, but the North advanced very efficient arguments to the contrary.

The next principle is that in case of need the Crown is entitled to the services of all its subjects. This is also Common Law, and the same law prevails in all civilized countries. In some, every male citizen or subject must serve a number of years in the army or navy, even in time of peace. The principle is that underlying the Conscription Act of the Confederate States, the Act under which the Draft took place for soldiers, which resulted in the well-known Draft Riots in your city, etc., etc.

About these two principles, there was no dispute.

Then Britain claimed the right to seize her subjects wherever she found them, except within foreign territory; and as the open sea was not foreign territory, she claimed the right to seize them on the open sea. There never was a claim made to seize American seamen, but Britain did claim and exercise the right to seize her own native-born subjects, although they had attempted to get rid of their allegiance. (Mahan, vol. 1, p. 3.) The United States did not contend that Britain had not the right of seizing her own natural-born subjects in British waters. It suggested that this right should not be exercised, but it was recognised that " this concession, if granted, would have been a friendly limitation by Great Britain of her own municipal jurisdiction." The naturalized Russian Jew finds himself still in parlous condition if he ventures back to Russia.

But the United States contended that " whatever the native allegiance of individuals, on board any vessel on the open ocean their rights were regulated by the nation to which the ship belonged." (Mahan, vol. 1,

p. 5.) Britain's claim was made as to merchant vessels without reserve, so long as they were not within the waters of another nation. There was no claim advanced officially to enter upon any ship of war of another nation. The act of the *Leopard* in enforcing a search of the *Chesapeake* was disavowed, and Berkeley recalled; and the principles of the British Government should no more be rendered responsible for that unfortunate occurrence than the principles of the United States for Commander Wilkes boarding the *Trent*. Berkeley had made a mistake in the law just as Wilkes did, his act was repudiated just as Wilkes' was, and while he was recalled he was not disgraced any more than Wilkes was. The only dispute on principle between the two countries, was whether the right to claim the services of a natural-born subject by taking him from the merchant ship of another nation could be exercised by Britain upon the open sea, which belongs to no one, or only within Britain's own waters.

In Britain there was no difference of opinion on this point; in the United States there was. Able and patriotic Americans like Gouverneur Morris had no hesitation in assenting to the British doctrine. Even in 1813, when the war was raging, he writes,—" Men of sound mind will see, and men of sound principle will acknowledge its existence." (Mahan, vol. 1, p. 6.) But Britain had, in pursuance of what she conceived to be her right, no more thought that she was doing wrong or imperilling the independence of the United States than the United States thought, three-quarters of a century later, when it seized British sealing ships sixty miles from the nearest land, took them to an American port and put the crews into an American prison, that it was doing wrong and imperilling the independence of Britain.

Whether such an act is an insult depends on the definition of " insult." Nothing is ethically an insult that is not intended as such. In every day life each

person judges for himself as to what is an insult, and anything he considers an insult is, to him, an insult. The American nation had, in my view, a perfect right to consider the exercise of this right an insult if they chose, to submit to it for a time if they chose, and to say when they chose that they would submit no longer. And no discredit is to be attached to that nation for not having declared war before. As a very great American says,— "No nation is obliged even in honour to adopt the *ultima ratio regum* in every case in which it is justified."

That the exercise of this supposed right was, beyond question, accompanied by very great hardship and very great abuses is quite certain. Webster in his splendid argument addressed to Ashburton, says,—"The difficulty of distinguishing between English subjects and American citizens has always been found to be great, even when an honest purpose of discrimination has existed." Hundreds of instances were found where Americans were claimed as English and impressed; some by an honest mistake. It is, perhaps, too much to think that this was the cause in every instance—a commander of a man-of-war with only half a crew, having in his hands the means of filling up his complement, is subjected to a severe test of virtue, too severe probably to be always withstood. It was an evil practice liable to terrible abuses.

But one should not forget that it was not in pure wantonness that the right was exercised; it was only in the midst of a life-and-death struggle for national existence that it was resorted to. Britain stood almost single-handed against great odds, her very life depended on her navy, she could not supply that navy without impressment, and there were not enough seamen left at home to impress. The dire distress, the imminent danger, of Britain was not unknown to Americans then and is not unknown now. "In 1796 her fleet was forced to abandon the Mediterranean. In 1799, a year after the Nile, Nelson had to implore a small Portuguese

division not to relinquish the blockade of Malta, which he could not otherwise sustain." (Mahan, vol. 1, p. 74.)

But she offered, before the war and when war was not even threatened, to undertake not to exercise the right except on extraordinary occasions and with proper precautions. That is how matters stood at the beginning of the war.

There is no doubt of the insistency of the American Government on the abandonment of the right by Britain.

In volume 1, of Mahan, we find it related that while Jay had no instructions in the matter when sent to negotiate the Treaty of 1794 (p. 88), Rufus King took it up in 1796 and 1797 (p. 120); Monroe had specific instructions from Madison in 1803 to protest, and again he and Pinkney in 1806; from that time on till the war, there were repeated and vigorous representations made.

When the war broke out, Admiral Warren came out from England to treat for peace. Monroe, the Secretary of State, told him that "an indispensable condition was the abandonment of the practice of impressment from American vessels," (p. 391), that "impressing from under the American flag must be discontinued during armistice arranged." The British Government refused this term, and no armistice was arranged. (pp. 391-392.)

In volume II. we find the story continued: Jonathan Russell, the American Chargé d'Affaires, in August, 1912, suggested an armistice to Castlereagh, but as the proposal included the same requirement, Castlereagh refused to consider it and absolutely refused even to discuss with him the suspension by Britain of the exercise of the right. This remained the only one of the two causes of rupture, the obnoxious Orders-in-council having been already repealed. (p. 410.)

The Czar of Russia, having offered to assist in bringing about peace, was informed by the British authorities that they would not submit the matter to the discussion of any mediator. (p. 412.)

The United States had accepted the Czar's offer and named Bayard and Gallatin to act with Adams as commissioners; Adams was informed by the Czar's ministers of the absolute refusal of Britain to discuss the terms of peace on any such basis. Subsequently Castlereagh suggested direct negotiation, and this being accepted by the United Staes, Henry Clay and Jonathan Russell were added to the Commission. (p. 413.) The demand of the three Commissioners had been peremptory: "Impressment must cease by stipulation. If this encroachment of Great Britain is not provided against, the United States have appealed to arms in vain." (p. 413.) And when direct negotiations were to begin "the same confident tone is maintained * * * this degrading practice must cease, * * *" and again later on, "in concluding a peace, even in case of a previous general peace in Europe, it is important to obtain such a stipulation."

Bayard and Gallatin were under no delusion as to the stand of Britain and the state of public opinion there. They, on the fall of Napoleon, intimated clearly to the President, Madison, that if the renunciation by Britain of the right of impressment was the condition of peace, then peace could not be procured. (Winsor, vol. VII., p. 484.) At a Cabinet meeting held June 27th, 1814,—"In consequence of letters from Bayard and Gallatin and other accounts from Europe of the ascendancy and views of Great Britain and the dispositions of the great Continental Powers, the question was put to the Cabinet,—'Shall a treaty of peace, silent on the subject of impressment, be authorized?' Agreed to by Monroe, Campbell, Armstrong and Jones. Rush absent." (Works of Madison, vol. III., p. 408; Mahan, vol. II., p. 266, note 3.) There was at that time no thought of Britain giving way on any point.

The same day the Commissioners were directed to "omit any stipulation on the subject of impressment if found indispensably necessary to terminate it. You

will, of course, not recur to this expedient until all your efforts to adjust the controversy in a more satisfactory manner have failed." (American State Papers, vol. III., p. 704; Mahan, vol. II., p. 266.) Gallatin had in the same month written the Secretary of State, "no better terms will be obtained than the *status ante bellum*." (Mahan, vol. II., p. 415.) The British Commissioners were instructed that "the question of abandoning the practice of impressment would not be so much as entertained." "The Commissioners were not even to discuss it." (Vol. II., p. 416.) When Mr. Adams drafted an article on impressment, the British Commissioners absolutely refused to consider it at all, and it was never mentioned again. (Winsor, vol. 7, p. 487.)

No one suggests that the abandonment of the demand that "impressment must cease by stipulation" was an acknowledgment by the United States of the justice of Britain's claim; but that this demand was abandoned is beyond all controversy.

From the ardent Lossing to the (in this instance, at least) judicial Roosevelt, American authors of standing state that the subjection of American ships to search, etc., was not put an end to by this war. Lossing, p. 1065,—"It (i.e., the Treaty) did not * * * secure to the Americans that immunity from search and impressment for which they went to war." Roosevelt, Naval War, 1812, p. 7, calls it,—"a peace which left matters in almost precisely the state in which the war found them."

You do not, of course, assert that the matter was mentioned in the Treaty, but you say,—"Concessions were made by Great Britain which probably justified the American Commissioners in not insisting upon the impressment feature of the American protest." (I may say, *en passant*, that this would be wholly inexplicable if the right of search was an "obstacle to complete independence.")

You add,—"especially as the collapse of the Napoleonic regime had left England free to send large forces against the United States." I am not sure as to the precise meaning of this; but apparently you mean that the fact that England could now send a large force into the war was a reason for the United States "not insisting upon the impressment feature of the American protest." That is practically certain; but when you suggest that concessions were made by Britain which justified the American Commissioners to abandon the claim, I take issue and most respectfully ask for particulars.

What ground is there for this proposition of concession inducing an abandonment of the claim by the American representatives? Their instructions are of record; the proceedings of the Commissioners did not take place in a corner; what they did and why, is well-known, and if it were the case it could easily be proved. Has anyone attempted to do so?

The fact is that the United States came out with nothing better than the *status quo ante bellum* (Mahan, vol. II., p. 431), even if it was not in a worse position as regards the right to fish, which is a large question and one I do not propose to touch upon here. Of course Britain abated some of her claims to territory which had not been hers before the war, etc., but these had no kind of relation to the claim as to impressment set up by the United States which Britain had, consistently and persistently, absolutely refused even so much as to consider.

Then look at the Treaty itself; it is short and easily accessible. Art. I. provides for the restoration of the *status quo;* Art. II., for the restoration of prizes taken after the ratification of the Treaty; Art. III., prisoners of war; Arts. IV, and V., for arbitration of the River St. Croix; Arts. VI. and VII., for arbitration of the boundary at the Lake District; Art. VIII., refers to these arbitrations; Art. IX., warfare against the Indians by the United States to cease (a concession by the United

States); Art. X., an indefinite agreement to attempt to abolish the slave trade; and Art. XI., as to ratification. That is all. Where is the Concession?

At the conclusion of the war, then, the state of affairs was that Britain expressly refused what had been repeatedly asked, and the United States was in the same state as before.

But you say "the United States did not care a fig about the maintaining of the right; what it did object to, however, was the enforcing of that 'right,' and the war put an end to that." With both of these statements I take issue.

In the first place the United States did care much more than a fig about the "maintaining of the right." We have seen that the United States demanded a "stipulation" that impressment should cease, and failed to obtain it. Then after the war, Adams, Clay and Gallatin were appointed Commissioners to negotiate a commercial treaty with Britain; they advanced at the very first opportunity a claim for the abandonment of the right of impressment by treaty. Britain refused to take any action in the matter (Winsor, vol. 7, p. 488), although later on Castlereagh expressed a willingness to consider the matter. (Probably the death of this statesman prevented a treaty being arrived at expressly abandoning the right.)

We may pass at once to Webster's time. I presume it cannot be contended that that very great man wasted his time in the discussion of a matter about which his country did not care. In his letter to Lord Ashburton, August 8th, 1842 (Webster's Works, vol. VI., p. 318), he says,—"We have had several conversations on the subject of impressment, but I do not understand that your Lordship has instructions from your Government to negotiate upon it, nor does the Government of the United States see any utility in opening such negotiations unless the British Government is prepared to renounce this practice in all future wars. No cause has

produced to so great an extent and for so long a period disturbing and irritating influences on the political relations of the United States and England as the impressment of seamen by British cruisers from American merchant vessels. * * *

"* * * At different periods both before and since the war negotiations have taken place between the two Governments with the hope of finding some means of quieting these complaints. * * * A common destiny has attended these efforts; they have all failed. *The question stands at this moment where it stood forty years ago.* * * * England asserts the right of impressing British subjects in time of war out of neutral merchant vessels, and of deciding by her visiting officers who among the crews of such merchant vessels are British subjects." He then proceeds to argue the question with great fairness and distinguished ability, and proceeds,—"A question of such serious importance ought now to be put at rest" and asks: "Is it not high time that * * * England should at length formally disclaim all right to the services of such persons and renounce all claim over their conduct." Speaking of the calm and quiet which have succeeded the late war, Webster continues: "Under these circumstances, the Government of the United States has used the occasion of your Lordship's pacific mission to review this whole subject and to bring it to your notice and that of your Government." Lord Ashburton answered: "No differences have or could have arisen of late years with respect to impressment, because the practice has, since the peace, wholly ceased, and cannot, consistently with existing laws and regulations for manning Her Majesty's Navy, be, under the present circumstances, renewed." He adds: "Sensible of the anxiety of the American people on this grave subject of past irritation, I should be sorry in any way to discourage the attempt at some settlement of it," and in view of Webster's "very ingenious arguments," he admits they "prove a strong

necessity of some settlement." He adds: "It must be admitted that some remedy should, if possible, be applied; at all events it must be fairly and honestly attempted," and while "during the continuance of peace no practical grievance can arise * * * it is for that reason the proper season for the calm and deliberate consideration of an important subject."

In his wonderful speech in the Senate, April 6th and 7th, 1846, Webster said: "It has been said that the Treaty of Washington and the negotiations accompanying it, leave the great and interesting subject of impressment where they found it. I must be permitted to say that the correspondence connected with the negotiation of that Treaty, although impressment was not mentioned in the Treaty itself, has * * * been regarded as not having left the question of impressment where it found it, but as having placed the true doctrine in opposition to it on a higher and stronger foundation. We shall negotiate no more, nor attempt to negotiate more, about impressment." (Webster's Works, vol. V., pp. 145-6.) We find him as late as May 21st, 1851, at a public dinner at Buffalo, speaking with pride of his discussion with Ashburton on the question of impressment. (Webster's Works, vol. V., p. 540.)

Was all this elaborate fooling? Or was it a matter about which the United States did really care?

The Presidents were not wholly silent in their messages to Congress: Madison, in his Seventh Annual Message, December 5th, 1815, speaks of the Treaty, of the Commercial Convention following it, and of arrangements on subjects which might endanger future harmony. He continues: "Congress will decide on the expediency of promoting such a sequel by giving effect to the measure of confining the American navigation to American seamen; a measure which * * * might have that conciliatory tendency * * *" Tyler in his message, August 11th, 1842: "The impressment of seamen from merchant vessels of this country by

British cruisers, although not practised in time of peace, and therefore not at present a productive cause of difference and irritation, has, nevertheless, been so prominent a topic of controversy, and is so likely to bring on renewed contentions on the first breaking out of a European war, that it has been thought the part of wisdom now to take it into serious consideration. The letter from the Secretary of State to the British Minister explains the ground which the Government assumed and the principles which it means to uphold." This is the letter already referred to from Webster to Ashburton.

Is it not quite certain that all these years the United States was not a little anxious for an express abandonment of the right claimed by Britain?

The statement that the war put an end to its enforcement has been dealt with by implication. The old and ever-recurring logical fallacy *post hoc, ergo propter hoc* out of the way, what is there to support it?

You seem to say that the alteration in the method of recruiting with the downfall of Napoleon was the cause of the abandonment of the practice of impressment; but you add: "Who shall say how large a part the War of 1812 had in bringing England to see the unwisdom of impressment and of the obnoxious system of press-gangs?" This appears to be a claim that the war, while it did not directly bring about a cessation of the practice of impressment of American seamen, did so indirectly by causing a cessation of the practice of impressment altogether. If this were true, I should be inclined to think the war was worth while.

The claim or suggestion is to me quite novel; I can find nothing to support it.

In the first place impressment did not cease either at the beginning or the end of the War of 1812; peace being agreed to in December, 1814, warrants to impress continued to be issued in 1815, and ceased not with the Treaty of Ghent, but with the downfall of Napoleon; and then ceased because they were no longer needed and

as they would have ceased had there never been an American war. Thousands of seamen were discharged and cast adrift who would fain have continued to serve. In 1810 to 1812 there were 113,600 seamen in the navy; in 1815, 70,000 for part of the year, 55,000 for the rest; in 1816, 24,000; in 1817, 13,000, while the decrease in number and tonnage of ships was equally marked. England was never brought " to see the unwisdom of impressment " in the sense of abandoning the right to impress.

The condition of sailors in the Royal Navy was improved in the general trend of advancing humanity, but the first modification in the law of impressment was not till 1835, twenty years after the war; and when the Act 5 and 6 William IV., cap. 24, was introduced, Sir James Graham, the First Lord of the Admiralty, expressly and emphatically reasserted the right of the Crown to impress seamen. All that the Act did was to limit the term of impressed men to five years, unless they volunteered for a further time, and to protect them against being impressed again under two years after discharge. All this will be found in Hansard. The improved condition of seamen has induced such an increase in volunteers that there is not now, and has not been for nearly a century any necessity for impressment, and there has been no war calling for a very large number of seamen; but the right still exists, and I can see no reason to imagine that the War of 1812 had anything whatever to do with the abandonment of the practice.

There is no doubt that England, long before the war, knew the unutterable villainies attending the practice of impressment. The wrongs of impressed men had been represented in petitions to Parliament at least as early as 1760; there was a mass of literature dealing with the subject: every one knew that the impressed man differed from the slave only in that his lot was not hereditary and he might some day be free. Many were the murders of mem-

bers of the pressgang and of their intended victims; wounds, slavery and death were all common incidents. The only counter-argument was "Necessity." Every fleet in the world but one was filled in like method, and it is to the eternal credit of the United States, that it, from the beginning, has made the naval service so attractive that volunteers have been found in sufficient numbers. Whether, had this not been the case, it would not have resorted in times of national peril to means for filling the navy, similar to those employed for filling the army, we need not consider; but in any case I venture to assert that the United States by the War of 1812 did nothing to abolish the practice in other countries.

This letter has grown to an inordinate length, but the subject is a very attractive one, and some of your propositions are new to me.

I should have liked you to join me in the hope that the War of 1812-14 will continue to be the last among the English-speaking peoples. I am

Yours very sincerely,

WILLIAM RENWICK RIDDELL.

P.S.—I am not sure what is the exact application of your allusion to the "*Little Belt*" episode, when more than a year before the war, as Roosevelt says,—"the American Frigate *President* attacked the sloop *Little Belt*." Of course, journals at the time said that Rodgers was sailing to release impressed men by force, but Monroe assured the British Minister, Foster, that Rodgers had no orders to that effect. Upon the enquiry, Rodgers and his officers swore that their ship had been fired on first; this was their sole justification. The story of the British officers was different; they alleged an unprovoked attack by a warship of far superior force. The United States did not pretend to justify an attack of that character, and it was because of the positive assertions under oath of the American officers that the matter

was allowed to drop. The probabilities seem to be in favour of Mahan's conclusion that the affair was an accident (Vol. I., p. 258)—though, no doubt, there are those who think the worst of the parties concerned. If Captain Bingham, with a sloop of twenty guns, was foolish enough to attack a frigate of forty-four, he deserved all he got.

W. R. R.

[NOTE.—Neither in the address at St. Louis nor in the discussion with the *Army and Navy Journal* was the cause of the War of 1812-14 a matter of debate; all that was under consideration by me was the result of the war.

Those who are interested in the question of the real causes may find a very recent and (apparently) a most fair and judicial discussion in an address by the Honourable John W. Foster at the meeting of the American Society for the Judicial Settlement of International Disputes at Washington, December 15th, 1910. Mr. Foster claimed the right to discuss the historical events of his country freely; he said that his great-grandfather went through the Revolutionary War as a Virginia Rifleman, his grandfather fought with Harrison at Tippecanoe and in his Canadian campaign, members of his family went to Kansas with their rifles in the fifties to save that territory to freedom, while he himself gave nearly four of the best years of his life as a volunteer in the Civil War to maintain the Union.

I copy a few sentences from his paper, which I may say gives full references to the sources: "The War of 1812 was a partisan and sectional war. . . . determined upon as a party measure. . . . . slight disguise was made of the purpose to conquer Canada. . . . The impressment of seamen did not bring on the hostilities with Great Britain, but its abolition became the avowed object of the war after the British Government had yielded on the question of blockade. . . . so far as naturalization and protection papers were concerned, it was manifest that unblushing frauds were openly committed and that with the connivance of American local officials. . . . The question was not settled by the War of 1812, and the American Government continued to press for its adjustment. . . . but it was not until 1860 that the President was able to inform Congress that Great Britain had finally abandoned its claim of visitation and search. Woodrow Wilson finds that nearly every year from 1804 up to the embargo, owing to the flourishing American trade, 'four thousand two hundred additional men were needed yearly to put crews into the new crafts, and it

was estimated that twenty-five hundred of the new men were in fact British subjects, no small proportion of them unquestionably deserters from His Majesty's Navy.' [Henry] Adams records that 'the captain of any British frigate which might happen to run into the harbour of New York, if he went ashore, was likely to meet on his return to the wharf some of his boat's crew strolling about the town every man supplied with papers of American citizenship . . . . no pretense was made of concealing the fraud, but these (papers) were issued in any quantity and were transferred for a few dollars from hand to hand.' Mahan cites the case of a retired American seaman of a North Carolina port who stated that 'it was an ordinary mode of procuring a little spending money to get a protection from a notary for a dollar and sell it to the first foreigner whom it all fitted for fifteen or twenty.' While there is no doubt that the British impressment had inflicted great hardship on *bona fide* American citizens. . . . the controversy never reached such a point that our Government was ready to make it a cause of war."

I make no comment on the above except to say that American historians are not agreed—and the facts may not be clear.—W. R. R.]

IN THE *Army and Navy Journal* OF NOVEMBER 1, 1913, appeared an ARTICLE BY HON. LIEUT.-COL. ASA BIRD GARDINER, former professor of Law, U. S. Military Academy, West Point, of which the relevant parts follow:

In the *Army and Navy Journal* for July 10, 1913, appeared an article by Mr. Justice William Renwick Riddell, of the Appellate Division of the Supreme Court of the Province of Ontario, Canada, entitled, "Results of the War of 1812," in which he accepts the "proposition that the impressment of American seamen was an efficient cause of the War of 1812," but argues that it was futile and that the assertion of a claim of right on the part of Great Britain, as stated by Daniel Webster in 1842, "of impressing British subjects in time of war out of neutral merchant vessels *and of deciding by her visiting officers who among the crews of such merchant vessels are British subjects*," was in no way put an end to nor decided by that war.

It is a fact, however, that since that war no commander of a British warship has ever ventured to board an American merchant vessel for any such purpose.

Mr. Justice Riddell also quotes from Rear Admiral Mahan (Vol. IV., p. 431) a statement "that the United States came out with nothing better than the *status quo ante bellum*," as nothing was said in the Treaty of Ghent of Dec. 24, 1814, on the subject of impressment.

This statement as to results is, however, traversable.

The Americans then went to war for certain principles now engrafted in the Law of Nations which, despite Mr. Justice Riddell, they never abandoned.

* * * * * * *

It was not necessary to insert in the Treaty of Ghent anything about impressment, and discussion of the subject in later years was purely academic.

The fact was patent—the Americans would no longer submit to it as practised by the British, but would fight.

* * * * * * *

The fact that Sir James Graham, First Lord of the Admiralty, as quoted by Mr. Justice Riddell, expressly and emphatically reasserted in 1835 the right of the Crown to impress seamen is a matter of no consequence, such a right having been exercised as early as 1415 under Henry V., and even the Congress of the United States might, in its wisdom, in case of necessity, resort to such practice under the plenary constitutional authority " to raise and support armies " and " to provide and maintain a Navy," instead of by voluntary enlistment or draft.

Such statement is not disputed; but the *manner* and *locality* of exercising the right of impressment is a very different thing.

* * * * * * *

What the United States of America fought for in the War of 1812 have been attained and engrafted permanently in the law of nations, viz.:

1. That the independence and territorial sovereignty of the nation is inviolable.

2. That the national flag protects seamen on regularly documented American vessels against foreign impressment.

3. That the neutral flag covers enemy's goods with the exception of contraband of war.

4. That neutral goods, with the exception of contraband of war, are not liable to capture under an enemy's flag.

5. That blockades in order to be binding must be effective; that is to say, maintained by a force sufficient really to prevent access to the coast of the belligerent and preclude a reasonable chance of entrance.

These are the results of the War of 1812; but there is another to which Mr. Justice Riddell has not referred, but equally important, and that is the lasting respect and esteem which that war inspired between the officers and sailors of the British and American navies, shared in by their land forces—a regard ever growing during a century of peace, and continually manifested when in port or at stations together, as in the recent Chinese war.

Always fraternizing and going hand in hand, the two kindred services recognize closest kinship in language, constitutional principles of law—literature, customs and regulations of service—and now the two great English-speaking nations, thus united, conserve the peace of the world.

God grant that it may ever be so.

REPLY OF MR. JUSTICE RIDDELL.

(*Army and Navy Journal,* NOV. 29TH, 1913.)

SUPREME COURT OF ONTARIO,
APPELLATE DIVISION,
OSGOODE HALL, TORONTO,
November 18th, 1913.

TO THE EDITOR OF *The Army and Navy Journal,* NEW YORK:

DEAR SIR,—An article on the Results of the War of 1812 appears in the issue of the *Army and Navy Journal* for November 1st, 1913, which I have just received. There are in it a number of references to myself; but I should not trouble you with a letter were it not for what seem to me extraordinary and unfounded claims which regard for historical fact should not allow to pass unchallenged. When I challenge them, I do so with the one desire to obtain a knowledge of the real facts, independently of opinion: I am anxious to be corrected if wrong by being furnished with authority showing what is true.

Let me say a few words as to the references to myself. The learned writer must, of course, have misunderstood me in one instance, for a gentleman writing for gentlemen could not descend to the petty and silly practice of setting up a man of straw to knock down. It is said: "The Americans then went to war for certain principles now engrafted in the Law of Nations which, despite Mr. Justice Riddell, they never abandoned." When and where did I say or suggest that they did? I stated categorically as to one, and the only one then under discussion, of these principles—"No one suggests that the abandonment of the demand that 'impressment must cease by stipulation' was an acknowledgment by the United States of the justice of Britain's claim; but that this demand was abandoned is beyond all controversy." And I am wholly uncon-

scious of ever saying or suggesting that the United States ever acknowledged expressly or by implication that it was in the wrong in any of its claims.

What I did say was that when Admiral Warren was sent out, shortly after the declaration of war, he was told that an indispensable condition of even a truce was the abandonment of the practice of impressment, and this was refused by the British Government; that Russell, the American Chargé d'Affaires, suggested an armistice to Castlereagh on the same terms and he absolutely refused even to discuss the suspension of the right; that the Czar of Russia's well-meant mediation was refused by Britain for the same reason; that the instructions of the American Commissioners were peremptory, "impressment must cease by stipulation. If this encroachment of Great Britain is not provided against, the United States have appealed to arms in vain" ; that when direct negotiations were begun with Britain the same confident tone was maintained.

This was early in 1814. Then the President was informed by the Commissioners of the state of public opinion in England, of the "ascendancy and views of Great Britain and the dispositions of the great continental powers," and forthwith took the advice of his Cabinet whether a treaty of peace, silent on the subject of impressment, be authorized. Colonel Gardiner says: "It was not necessary to insert in the Treaty of Ghent anything about impressment, and discussion of the subject in later years was purely academic." From Aug., 1812, till June, 1814, the only matter which stood in the way of peace was the insistence by the United States upon a stipulation by Britain to desist from her impressment; the American requests on the other matters in dispute were not " made indispensable conditions of peace." (Winsor, vol. VII., p. 483.) It surely cannot be said with any reason that the United States was pouring out blood and treasure for an academic point; it was a most real contention which it was making. How

did it come to be immaterial on June 27th, having been an indispensable prerequisite four days before? On June 23, 1814, Munroe wrote to the envoys at Ghent saying it was thought better not to continue the war "after the other essential cause of the war, that of impressment, should be removed." Before June 27, no treaty could be entered into without a stipulation on Britain's part; after that day such a stipulation was not necessary. Why? The *Army and Navy Journal* suggested that concessions were made by Britain which justified this omission. I can find none and had never heard the suggestion before. The Treaty is not long and it will speak for itself.

Was the discussion of the subject in later years purely academic? No one but an American would venture to say this of a matter the subject of warm debate in the Cabinet of Monroe—Adams, Wirt, Crawford and Calhoun, as well as the President, taking part; the subject of instructions to Ministers, taken up by Adams, Clay, Gallatin, Webster; the subject of messages to Congress of more than one President; and I ask again was all this elaborate fooling? Just think what Webster would have said had he heard the subject of some of his most splendid state papers and speeches described as academic! But, of course, that may be a matter of definition of terms.

The following sentence seems to be written by Col. Gardiner as a reason for saying the question was academic. "The fact was patent. The Americans would no longer submit to it as practised by the British but would fight."

No one (with negligible exceptions) supposed the Americans would not fight if they thought it worth while; no one supposed the breed had degenerated by crossing the Atlantic. Every one must exercise his own judgment as to how far it would render a subject academic for a nation to carry on war for two years on account of it and then drop it without a word when the other contending nation came into a position to bend its energies to the war.

This is not the place to speak of the respective victories and defeats. Some day the Colonel and I may don the blue and the scarlet and talk over the war. He will tell me of Sir George Prevost and I him of General Hull; he will speak of Scott, I of Brock; he will dilate upon Put-in-Bay and Moraviantown, I upon Detroit, Queenston Heights and Chateauguay, etc., etc., etc.—or he will hand me an American School history and I him one of Canadian origin.

Nor shall I enter upon the righteousness of the war, nor its real causes. For all purposes of this discussion, I accept the statement that impressment of American sailors was a real cause of the war—a whole contemporary political party and a whole school of American historians to the contrary notwithstanding. And the righteousness of the war is not here in controversy; we are concerned only with the results.

I should have had some complaint to make that the Colonel says: "The fact that Sir James Graham . . . as quoted by Mr. Justice Riddell, expressly . . . reasserted in 1835 the right of the Crown to impress seamen is of no consequence," were it not that, no doubt, the statement is due to my former letter not appearing in full.

The article in the *Journal*, June 7th, had said "Justice Riddell says the change was due to the alteration in the method of recruiting which the British Navy experienced with the downfall of Napoleon. This may well be true, but who shall say how large a part the War of 1812 had in bringing England to see the unwisdom of impressment and of the obnoxious system of press gangs?" It was in discussing this that I said: "You seem to say that the alteration in the method of recruiting with the downfall of Napoleon was the cause of the abandonment of the practice of impressment; but you add: 'Who shall say how large a part the War of 1812 had in bringing England to see the unwisdom of impressment and of the obnoxious system of press gangs?'

This appears to be a claim that the war, while it did not directly bring about a cessation of the practice of impressment of American seamen, did so indirectly by causing a cessation of the practice of impressment altogether. If this were true I should be inclined to think the war was worth while.

" The claim or suggestion is to me quite novel; I can find nothing to support it."

Then the letter proceeds as it is printed. It will be seen what was the relevancy of my statement as to the continued claim of the Crown to impress.

With much respect and with a sincere desire to know the exact fact, I venture to suggest that the logical fallacy *post hoc ergo propter hoc* runs through the conclusions of the paper of Colonel Gardiner. He says, " it is a fact, however, that since that war no commander of a British warship has ever ventured to board an American merchant vessel for any such purpose "—he does not say as he might " since that war no commander of a British warship has ever ventured to board a British merchant vessel for any such purpose." Did the War of 1812 put an end to it, or was it the passing away of Britain's need?

My whole theme from the beginning has been the comparative futility of war for settling questions in dispute between nations. The indirect results of this war did not come within the ambit of discussion. Lossing mentions some, Mahan others; and it would be indeed a terrible thing if no good came out of the lavish expenditure of blood and treasure—some good comes out of an epidemic of cholera or the plague. If anyone thinks that the good feeling between the peoples is due to the war rather than to the century of peace, he has the right to his opinion. In my view the war did not increase or tend to increase the fraternity of the English-speaking peoples, but it checked the growth of that fraternity to no inconsiderable extent. My opinion may well be erroneous, but such as it is it comes from somewhat

extensive study of one branch of these peoples. That is opinion; and I ask no one to accept it.

But there are facts about which there should be no dispute, and about these I make enquiry.

Colonel Gardiner sets out what he says " the United States fought for in the War of 1812 " and " what have been attained and engrafted permanently in the law of nations . . . the results of the War of 1812." Some of these claims are novel and none, so far as my reading of history and international law goes, is well founded. I must respectfully ask for authority for these claims other than mere personal assertion. The transactions were not done in a corner; almost everything is of record.

In considering the claims, I shall for the time being disregard the Orders-in-Council. The claims are five in number:

" 1.—That the independence and territorial sovereignty of the nation is inviolable."

Of course it has become the conventional thing to say that the War of 1812 was the second War of Independence, that it was waged to complete the independence of the United States, etc., etc. I said in my previous letter that the accuracy of this depends upon the definition of the word " independence "; in the ordinary sense, it would be impossible to justify the statement. It was not because the United States had been colonies that the right to enter upon its ships was claimed, and certainly Britain had no more intention of attacking the independence of the United States than that of Spain or any other country. Wilkes boarded the *Trent* and took off Mason and Slidell; did either country imagine for a moment that this was an attack on the independence of Britain? In 1886 an American cutter seized three British ships sixty miles from the nearest land, took them with their crews to Unalaska, and there detained some of them in prison. Britain claimed redress and got it. Further seizures were made

in 1887. Britain did not suggest that her independence was attacked; and anyone would be laughed at who asserted that it was.

Nor did Britain imagine that she was attacking the territorial sovereignty of the United States. That this was inviolable no one denied and there was never any dispute about it. There was a dispute as to the extent of the territorial sovereignty just as there was as to the extent of the territorial sovereignty of the United States in the Bering Sea, the territorial sovereignty in the *Trent* affair. But is not to say that a principle that "the independence and national sovereignty of the nation is inviolable" was "attained and engrafted permanently in the law of nations" by "the War of 1812" a use of the English language wholly unknown to most English-speaking people?

If there was any foundation for the charge that the conduct of Britain was an attack upon the independence of the United States, how came it that nearly half the nation opposed the war most bitterly and many States refused to furnish men? Was Massachusetts, the mother of patriots, become the mother of copperheads, cowards and slaves? Was the war which Henry Adams said "nearly severed the Union," against which New England and New York voted, a war for independence? And when was the principle of inviolability of independence and territorial sovereignty either taken out of or "engrafted permanently in the law of nations"?

The second claim I have already dealt with by implication.

"3.—That the neutral flag covers enemy's goods with the exception of contraband of war."

So far as I know, this claim is wholly unfounded; the United States did not go to war for any such principle and it was not introduced into international law as a result of the war. "During the war . . . which commenced between the United States and Great Britain in 1812, the Prize Courts of the former uniformly enforced the generally acknowledged rule of international law that enemy's goods in neutral vessels are liable to capture

and confiscation except as to such powers with whom the American Government had stipulated by subsisting treaties the contrary rule that Free Ships should make free goods." (Wheaton, p. 627, sec. 471.) In *The Nereide* (1815), 9 Cranch, 388, Chief Justice Marshall, p. 418, says: "The rule that the goods of an enemy found in the vessel of a friend are prize of war, and that the goods of a friend found in the vessel of an enemy are to be restored, is believed to be a part of the original law of nations as generally, perhaps universally, acknowledged. Certainly it has been fully and unequivocally recognized by the United States." Kent in his *Commentaries*, written long after the war, says the same thing. (Vol. I., pp. 129-131.) The American Prize Courts during the Revolutionary War had followed the same rule. (Wheaton, p. 608.) And during the wars of the French Revolution the United States admitted that its flag, being neutral, did not cover enemy's property. President Jefferson, writing to Genet, the French minister, August 16th, 1793, says, in answer to a claim that French goods should be free on American ships, "on the contrary we suppose it to have been long an established principle of the Law of Nations that the goods of a friend are free in an enemy's vessel and an enemy's goods lawful prize in the vessel of a friend." He had said in a previous letter to Genet, of July 24th, 1793: "I believe it cannot be doubted but that by the general law of nations the goods of a friend found in the vessel of an enemy are free, and that the goods of an enemy found in the vessel of a friend are lawful prize. Upon this principle . . . the British armed vessels have taken the property of French citizens found in our vessels . . . and I confess I should be at a loss on what principle to reclaim it."

There is no word of any such claim as we are considering in the message of June, 1812. While no doubt the United States endeavored to have such a provision in all treaties, there was no pretence that the claim was

based on international law, and as Kent—writing in 1826—says (at p. 130), while "the rule of public law that the property of an enemy is liable to capture in the vessel of a friend is now declared on the part of our Government to have no foundation in natural right, and that the usage rests entirely on force," he adds, "the authority and usage on which that right rests in Europe and the long, explicit and authoritative admission of it by the country have concluded us from making it a subject of controversy." Woolsey, writing about 1871, says, sec. 185: "until very recent times the rule . . . that free ships make free goods was not settled." "For a long time the prevailing rule was . . . enemy's goods unsafe under any flag." And he fixes the Treaty of Paris in 1856 as the time when the better rule became part of international law, at least for signatory powers. So long as the United States refrained from signing the Treaty, Woolsey says: "Nor could we, if we were neutrals, carry the goods of either enemy upon our vessels, for the four articles do not apply except to the signers of them." "However solicitous America might be . . . to obtain the concession of this principle . . . she had never conceived the idea of obtaining that consent by force." (Wheaton, p. 611.)

Surely it cannot be seriously contended that the United States were guilty of the inconsistency and hypocrisy of going to war to enforce a law diametrically opposed to that laid down and administered by its own Courts before, during and after the war, or that a result of such war is a change not made till forty years afterwards.

"4.—That neutral goods with the exception of contraband of war are not liable to capture under an enemy's flag."

It is hard to think that this is seriously intended. Both before and during the war this was the law of England—Chitty's Law of Nations, 1812, p. 111—and it was enforced by the Prize Courts in England during

this very war. For example, in the case of *The Cygnet* (May 2nd, 1813), 2 Dodson's Admiralty Reports, 299, a British man-of-war had taken an American privateer which had Spanish goods on board; the cargo was sold and the judge ordered seven-eighths to be paid to the Spaniard and one-eighth to the captors as salvage. On appeal, Sir William Scott (Lord Stowell), held that the whole proceeds must go to the Spanish claimant without allowing even expenses.

The doctrine that neutrals' goods were seizable on board an enemy's ship was "unknown to and unpractised by British Courts." (Phillimore, International Law, Vol. III., sec. 166, p. 310.)

"5.—That blockades in order to be binding must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast. . . ."

There was never any dispute as to this. Sir William Scott (afterwards Lord Stowell) had, in 1798, laid it down as clear law that there must be "a number of vessels stationed round the entrance of the port to cut off all communication." *The Betsey*, 1 C. Rob. 93. In 1800 the question in controversy was not whether a blockading force should be capable of completely investing, but whether a temporary absence raised the blockade. (Moore, sec. 1269.) In 1803 an incomplete blockade by a British Admiral of Martinique and Guadeloupe was countermanded on the facts being represented to the British Government by the United States. (Mahan I., 99.) What was claimed by the United States and the result of the claim may be seen from a few extracts from Mahan which I subjoin:

"There was no difference between the two Governments as to the general principle that a blockade to be lawful must be supported by the presence of an adequate force . . . the difficulty turned on a point of definition as to what situation and what size of a blockading squadron constituted adequacy. The United States based themselves resolutely on the position that the blockaders must be close to the ports named for closure

and denied that a coast line could be thus shut off from commerce without specifying the particular harbours before which the ships would be stationed." (Mahan I., 110.) What were called the "new" principles of blockade which Britain was called upon to renounce were "that unfortified ports, commercial harbors, might be blockaded, as the United States a half century later strangled the Southern Confederacy. Such blockades were lawful then and long before." (Mahan I., 242—) "The United States have received their lesson in history. If the principles contended for by their representatives Marshall and Pinkney had been established as international law before 1861, there could have been no blockade of the Southern coast in the Civil War." May 31st, 1814, a proclamation was made by Britain of blockade of the coast of the United States from New Brunswick to Florida; this "was a clear defiance, in the assurance of conscious power, of a principal contention of the United States that the measure of blockades against neutrals was not legitimately applicable to whole coasts, but only to specified ports closely watched by a naval force competent to its avowed purpose." (Mahan II., 11.) "The American *projet* . . . consisted of articles embodying the American positions on the subjects of impressment and blockade . . . These demands which covered the motives of the war . . . were pronounced inadmissible at once by the British and were immediately abandoned. Their presentation had been merely formal; the United States Government within its own Council Chamber had already recognized that they could not be enforced." (Mahan II., 432.) Let me only add that less than a month after the last blockade spoken of above the United States gave instructions to their Commissioners to abandon the only claim which stood in the way, and had from the beginning of the war stood in the way, of peace negotiations.

So far I have said nothing about the Orders-in-Council. These were admittedly not justified by the law of

nations. Britain based them upon the illegal measures of Napoleon and sought to justify them by alleging the acquiescence of neutrals in the illegal measures of her opponent. Mahan points out that the prohibition against entering certain ports was not because they were blockaded, but "as if the same were actually blockaded." There was no attempt to change the law of blockade, but Britain claimed that by reason of neutral nations submitting to Napoleon's decrees, she had a right to compel them to submit to similar decrees on her part.

Sir William Scott (1812), *The Snipe*, Edwards Ad. R., 381, says, "these orders were intended and professed to be retaliating against France; without reference to that character they have not and could not be defended, but in that character they have been, justly in my apprehension, deemed reconcilable with those rules of natural justice. . . ."

This was probably bad law and certainly bad morals. The obnoxious Orders-in-Council admittedly violated international law; but they were a war measure, and they were repealed a few days after the declaration of war, before any news of it could get across the Atlantic and before any steps of aggression were taken in the war. I have consequently not supposed that anyone could or did contend that the war was carried on for anything contained in these Orders-in-Council, or that the repeal was in any wise a result of the war.

That the war was not carried on as a result of anything contained in the Orders-in-Council is made especially clear when we remember that when the Peace Commissioners came together "the American *projet* . . . consisted of articles embodying the American positions on the subjects of impressment and blockade with claims for indemnity for losses sustained by irregular captures and seizures during the late hostilities between France and Great Britain; *a provision aimed at the Orders-in-Council.* These demands which covered the motives of the war and may be regarded as the offensive side of

the American negotiation, were pronounced inadmissible at once by the British and were immediately abandoned." (Mahan II., 432.)

Let me conclude by joining most cordially in the aspiration for perpetual peace and friendship between the peoples and by expressing the hope that no one will think it necessary to have another war to increase mutual respect and fraternal feeling—on that theory we should have a war at least every generation.

I am,

Yours very truly,

WILLIAM RENWICK RIDDELL.