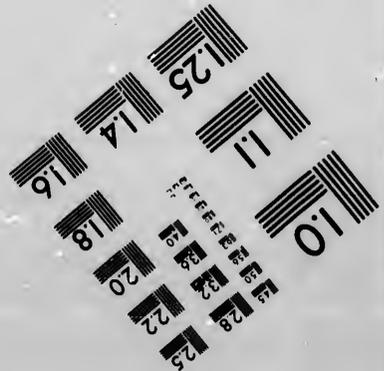
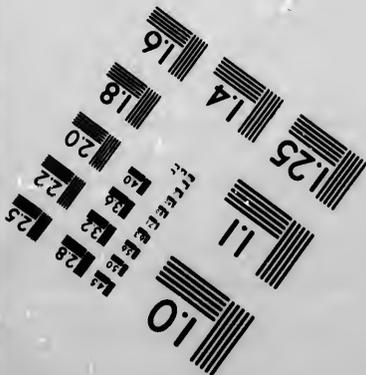
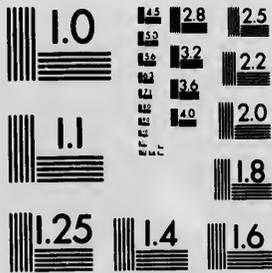


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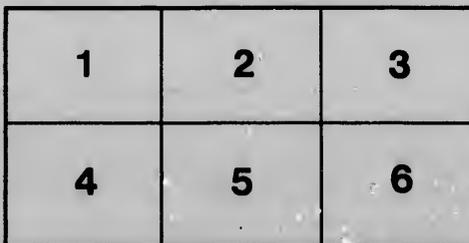
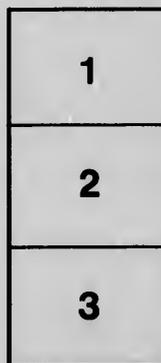
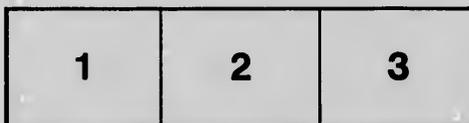
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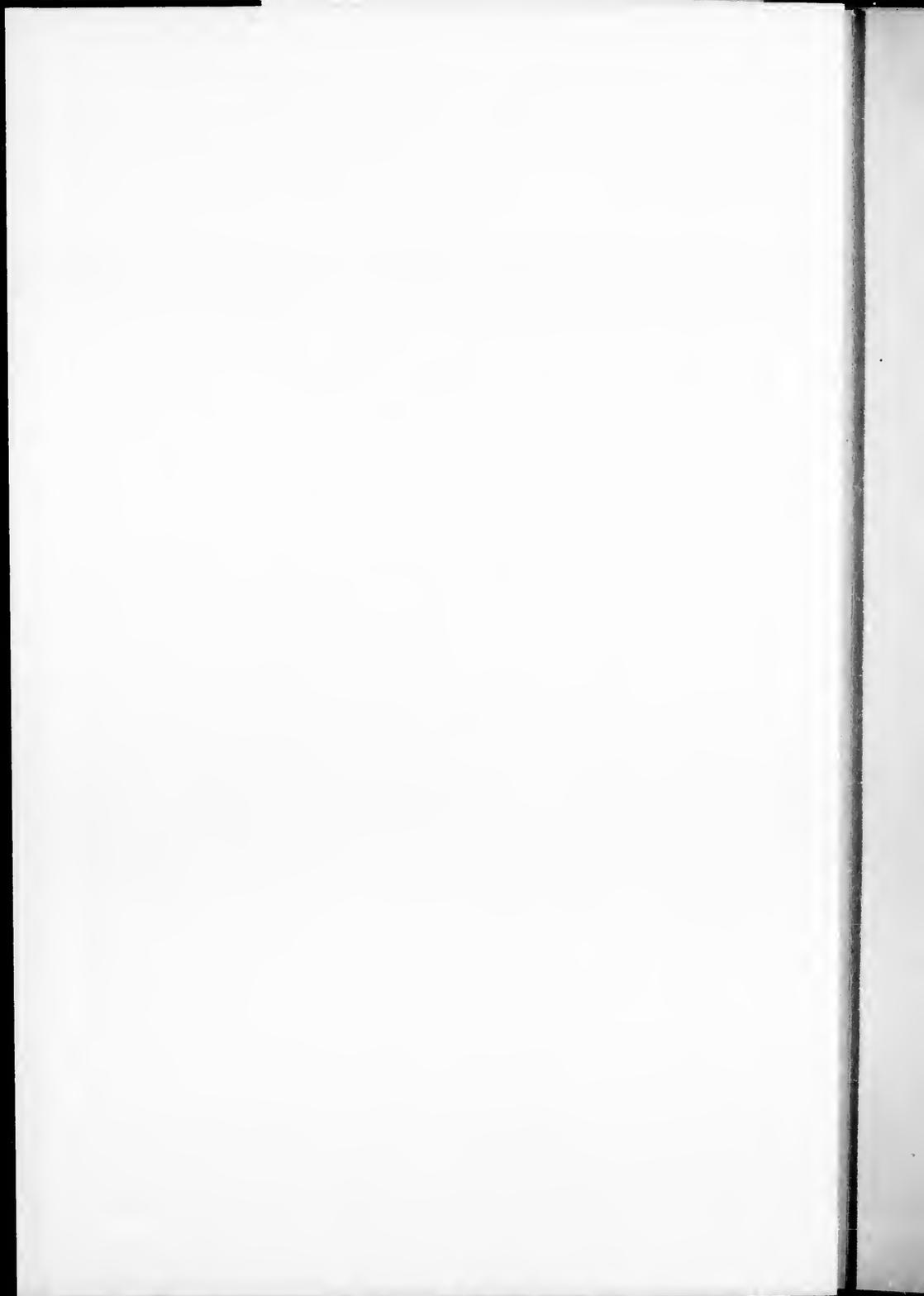
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CANADA AND THE UNITED STATES: AN HIS-
TORICAL RETROSPECT.



CANADA AND THE UNITED STATES: AN HISTORICAL RETROSPECT.

By JOHN GEORGE BOURINOT, C.M.G., LL.D., D.C.L., Clerk of the House of Commons, Ottawa, Canada.

When we review the past history of America, we can well believe that there has been a destiny ever "shaping the ends" of the Canadian communities, however diplomatists and statesmen have endeavored "to rough-hew them" in the early times of their development. In the beginning of the seventeenth century, England and France entered on that contest for the supremacy in America which did not end for a hundred and fifty years. The ruins of an old church tower, covered by ivy, and some gray tombstones, are the only remains of the first permanent English settlement made in Virginia, on the banks of the James River, by a few adventurous Englishmen; but the picturesque heights of Quebec, with its imposing citadel and ancient walls, its time-worn convents and churches, its curious climbing streets, and its French people, still recall the story of the bold Frenchmen who landed there one year after the English founded Jamestown. Then came the settlement of Massachusetts by the sturdy, self-reliant, narrow-minded Puritans, who have moulded the thought and stimulated the action of the old Eastern and Western States, and practically laid the foundation of the free institutions of America. The English colonies, possessing representative institutions, left to manage their internal affairs with little or no interference on the part of the parent state, were in a position to attain a degree of prosperity which the French-Canadian settlements on the banks of the St. Lawrence, governed like a province of France, having not even a semblance of local government,

allowed no opportunities for commercial development, were never able to show during their interesting and picturesque history as a French colony. When the Treaty of Paris was signed in 1763, the results of French ambition in America were to be seen in a poor struggling colony on the banks of the St. Lawrence, and in a few settlements on the Illinois and in the Mississippi valley. The total population of all these settlements did not exceed eighty thousand souls, of whom seventy thousand were living in the St. Lawrence valley.¹ The ambition of France had aimed at the acquisition of a continent during the memorable years of her occupation of Canada. Until the year of her defeat, her flag was floating on a series of forts and settlements stretching from Louisbourg on the Atlantic Coast, through the St. Lawrence and the Great Lakes, and through the valleys of the Ohio and the Mississippi, as far as New Orleans on the Gulf of Mexico. The British colonies were confined to a narrow strip of territory extending from the St. Croix to the Susquehannah, and confined between the Atlantic Ocean and the Appalachian Mountains, which barred their progress to the West. Even then the population of the Thirteen Colonies had reached one million, one hundred and sixty thousand souls, or nearly fifteen times the French population of the St. Lawrence and Mississippi basins.² In wealth there was no comparison whatever between the two populations. The people of the English colonies were full of commercial energy and the spirit of political freedom. The people of the French province were the mere creatures of a king's ambition, and their energies were chiefly devoted to exploration and the fur trade. The history of French Canada has picturesque aspects which are wanting in that of the more sturdy, self-reliant English colonists. The spirit of adventure which distinguished the French above the English colonists, first gave to the world the knowledge of the Great West, and of that wondrous valley through which the Mississippi

¹ See Hinsdale, "The Old Northwest; with a View of the Thirteen Colonies as Constituted by the Royal Charters," pp. 47, 48, 63, 69.

² Hinsdale, "The Old Northwest," p. 69.

with its many affluents makes its way to the southern gulf. It was inevitable, however, that this courageous and patient people, wanting that independence of mind which is the logical sequence of English self-government, should fail at last in the scheme of conquest which France hoped by their aid to accomplish on this continent. The conflict that was fought in America for a century and more was a conflict of antagonistic principles—the principle of self-government and freedom of thought, against the principle of centralization and the repression of political liberty. Freedom won on the Plains of Abraham, and a great Frenchman and a great Englishman consecrated by their deaths on the same battlefield the future political union of two races on the northern half of the continent. Of the great events of history that have moulded the destinies of peoples, none has had more momentous consequences than the conquest of Canada one hundred and thirty years ago.¹ One consequence has been the development of a powerful federal republic now composed of sixty-two millions of people—the heirs of those free colonies which were founded by Englishmen and flourished under the influence of English principles of government. The second consequence has been the establishment of a *fédération* known as the Dominion of Canada, possessing political institutions which give remarkable scope to individual energies, and enable the French Canadians of themselves even now to look forward to the realization of those dreams of ambition which were the incentive to action of many noble men in those brave old days when France held the St. Lawrence and the illimitable region of the West. But this grand conception of an empire is in course of realization, not under the influence of French principles

¹ "With the triumph of Wolfe on the Heights of Abraham began the history of the United States. By removing an enemy whose dread had knit the colonists to the mother country, and by breaking through the line with which France had barred them from the basin of the Mississippi, Pitt laid the foundation of the Great Republic of the West."—Green, "History of the English People," iv., 194. See also Bancroft, "History of the United States," ii., 537; Bourinot, "Canadian Studies in Comparative Politics (Canada and the United States)," p. 39.

of government, but under the inspiration of those English institutions which, the experience of centuries proves, are best calculated to develop political freedom, individual energy, and the finest qualities of human endeavor.

The conquest of Canada removed that fear of France which had long confined the old Thirteen Colonies to the country between the sea and the Alleghanies, and opened at last to their adventurous sons that great West which in later times has had such wondrous effects on the commerce of America. The Treaty of Paris in 1763 was the end of French dominion on this continent. It was immediately followed by a proclamation from George III., establishing new governments in America as a result of the English acquisitions from France and Spain. East and West Florida were formed out of the Spanish possessions to the south of the Thirteen Colonies, and the old French colony was confined practically to the St. Lawrence, and was to be thereafter known as the government of Quebec. The English possessions now reached the east bank of the Mississippi River, while Spain held the great country to the west of that river known as Louisiana. The claims of the Thirteen Colonies to the country between the Alleghanies and the Mississippi were not recognized by the British government. On the contrary, settlement was discouraged in that rich region, and there is every reason for the opinion that the English ministry of that day had determined to retain its control in their own hands and not to give new opportunities for the expansion of the old colonies, whose restlessness and impatience of all imperial restraint were becoming quite obvious to English statesmen.¹ But events, as usual, moved faster than the logic of statesmen. The war of American independence broke out as a result of the practical freedom enjoyed by the colonies for a hundred years and more. The self-assertion of the Thirteen Colonies had its immediate results on the fortunes of Canada, for

¹ See the report of the Lords Commissioners for Trade and Plantations, drawn by Lord Hillsborough, with respect to inland or western settlement Hinsdale, "The Old Northwest," p. 134.

among the acts passed by the imperial government, in accordance with a new and vigorous policy of colonial government, was the statute known as the Quebec Act of 1774, which extended the limits of the province of Quebec so as to include the country long known as the old Northwest. This act was obviously intended—indeed, it appears to have been a sequence of the policy of 1763—to confine the old English colonies to the country on the Atlantic coast, and to conciliate “the new subjects” of England, the French population of the St. Lawrence and of the North west, since it established a larger province with the civil law of the French *régime*, and removed the political disabilities under which the Roman Catholics had labored since the conquest of Canada.¹ The passage of the Quebec Act was believed to be just as hostile a message to the English population of the Thirteen Colonies as it was a charter of the political and religious freedom of the French of Canada. The Congress of the rebellious colonies inveighed against it in bitter terms as “unjust, unconstitutional, and most dangerous and destructive to American rights.” Few acts of the imperial government have been of more vital consequence to the destinies of a community than the Stamp Act, which gave the first stimulus to the spirit of independence which, in the nature of things, was ready to break forth in the old English colonies on the slightest provocation, or the Quebec Act, which virtually established on the banks of the St. Lawrence the language, religion, and law of Rome.² During the war of independence impassioned appeals were made to the French of Canada to join the Thirteen Colonies against England, and with a curious ignorance of the conditions of a people who probably never saw a printed book, and who never owned a printing-press during the French *régime*, references were made to the writings of Beccaria and to the spirit of the “immortal Montesquieu.” With the

¹ Bancroft, “History of the United States,” iv., 79, 80.

² See Christie, “History of Lower Canada,” i., 17-25. “The proclamation,” says the author, “fell to the ground, still-born as it were, not one *habitant* of a thousand ever having heard of it.”

same remarkable fatuity that has often prevented the people of the United States in these later days from understanding the feelings of Canadians, their predecessors in those early times attacked the Quebec Act as a measure of Roman Catholic tyranny at the very time they were asking the assistance of the French Canadians.¹ Canada was invaded, and when Montgomery fell at Quebec the tide of invasion was forced back into the rebellious colonies. The mass of the French Canadian people no doubt looked with the most perfect indifference on the struggle between England and her former subjects, and here and there were found a few men, English as well as French, quite ready to welcome and assist the invaders should success accompany them in their progress through Canada; but the influence of the Quebec Act was felt from the outset, and the dominant classes, the bishops and clergy of the Roman Catholic Church, and the principal-French Canadian *seigneurs*, combined to preserve Canada to a country which had given such strong guarantees for the preservation of the civil and religious rights of its new subjects.

The period from 1774 to 1800 was one of great moment to Canada and the revolted colonies. The treaty of 1783, which acknowledged the independence of the latter, fixed the boundaries of the two countries, and laid the foundation of fruitful controversies in later times. Three of the ablest men the United States can claim as its sons—Franklin, John Adams, and John Jay—succeeded, by their astuteness and persistency, in extending its limits to the eastern bank of the Mississippi despite the insidious

¹ See "Address to the People of Great Britain," dated at Philadelphia, Sept. 5, 1774, in which the delegates of the colonies expressed their astonishment that "a British parliament should ever consent to establish in that country [Canada] a religion that had deluged your island in blood, and dispersed impiety, bigotry, persecution, murder, and rebellion through every part of the world." On Oct. 26, 1774, seven weeks later, the general congress ignored the foregoing address and issued the appeal to the Canadians mentioned in the text. The time was too short to convince the Quebec clergy of a change of sentiment with respect to the Roman Catholic religion. See Christie, "History of Lower Canada," i., 8, 17; Bancroft, "History of the United States," iv., 81.

efforts of Vergennes, on the part of France, to hem in the new nation between the Atlantic and the Appalachian range.¹ The relatively little interest that was taken in Canada during the preliminary negotiations may be easily deduced from the fact that Oswald, the English plenipotentiary, was even ready to listen to the audacious proposition made by Franklin for the cession of Canada to the new federal republic — a proposition which has apparently moulded the policy of the United States ever since. It is said of Oswald that, when he returned to England with the draft treaty and was questioned by London merchants on the subject, he confessed his ignorance and wept over his own simplicity. "The truth is," said Dr. Franklin in a letter from Paris, "he (Oswald) appears so good and honorable a man that, though I have no objection to Mr. Grenville, I should be loath to lose Mr. Oswald."² Well might the astute Franklin be "loath to lose" an envoy who conceded not only the territory west of the Alleghanies as far as the Mississippi, and valuable fishing rights and liberties on the banks and coasts of the remaining English possessions in North America, but also showed his ignorance of English interests by establishing boundaries which, in later times, made Canadians weep tears of humiliation.³

The United States now controlled the territory extending in the east from Nova Scotia (which then included New Brunswick) to the head of the Lake of the Woods and to the Mississippi River in the west, and in the north from Canada to the Floridas in the south, the latter having again become Spanish possessions. The boundary between Nova Scotia and the Republic was so ill-defined that it took half

¹ See "John Jay" (*American Statesmen Series*). By George Pellew, pp. 184-188. Also, Hinsdale, "The Old Northwest," pp. 177, 181.

² See "Compressed View of the Points to be Discussed in Treating with the United States," London, 1814. Also, "Letters to the Rt. Hon. E. G. S. Stanley, M. P., upon the Existing Treaties with France and America." By Geo. R. Young, London, 1834.

³ The definitive treaty of peace between England and the United States was signed September 3, 1783, and contained all the provisional articles, negotiated principally by Oswald with the American Commissioners.

a century to fix the St. Croix and the Highlands which were by the treaty to divide the two countries. In the far West the line of division was to be drawn through the Lake of the Woods "to the most northwestern point thereof, and from thence on a due west course to the river Mississippi"—a physical impossibility since the head of the Mississippi, as it was afterwards found, was a hundred miles or so to the south. In later times this geographical error was corrected and the curious distortion of the boundary line, that now appears on the maps, was necessary at the Lake of the Woods in order to strike the forty-ninth parallel of north latitude which was subsequently arranged as the boundary line as far as the Rocky Mountains. Of the difficulties that arose from the eastern boundary line I shall speak later.

With the acquisition of a vast territory, acquired by the earnest diplomacy of its own statesmen, the United States entered on that career of national development which has attained such remarkable results within a century. The population of the country commenced to flow into the West, and the famous ordinance of 1787 was passed by Congress, providing for the organization of the western territories, and the eventual establishment of new states of the Union. By 1800 the total population of the United States was over five millions of souls, of whom over fifty thousand were already dwelling in the embryo States of Ohio, Indiana, Illinois, Michigan, and Wisconsin—the "old Northwest." By 1800 a great change, too, had taken place in the material and political conditions of British North America. One of the most important results of the war of independence had been the migration into the provinces of some forty thousand people, known as United Empire Loyalists, on account of their having remained faithful to the British Empire, and who during the progress of the war, but chiefly at its close, left their old homes in the thirteen colonies. When the treaty of 1783 was under consideration the British representatives made an effort to obtain some practical consideration from the new nation for the claims of

this unfortunate people, who had been subject to so much loss and obloquy during the war. All that the English envoys could obtain was the insertion of a clause in the treaty to the effect that Congress would recommend to the legislatures of the several States measures of restitution—a provision which turned out, as Franklin intimated at the time, a perfect nullity.¹ The English government subsequently indemnified these people in a measure for their self-sacrifice, and among other things gave a large number of them valuable tracts of land in the provinces of British North America. Many of them settled in Nova Scotia, others founded New Brunswick, and Upper Canada, now Ontario. Their influence on the political fortunes of Canada has been necessarily very considerable. For years they and their children were animated by a feeling of bitter animosity against the United States, the effects of which can still be traced in these later times when questions of difference have arisen between England and her former colonies. They have proved with the French Canadians a barrier to the growth of any annexation party in times of a national crisis, and have been in their way as powerful an influence in national and social life as the Puritan element itself in the Eastern and Western States.

In 1792 the imperial parliament again intervened in Canadian affairs, and formed two provinces out of the old province of Quebec, known until 1867 as Upper Canada and Lower Canada, and gave to each a legislature composed of two Houses. This was a momentous change in the political position of the country, for it virtually separated the English and French into two sections and increased the facilities previously given by the Quebec Act, for the conservation and perpetuation of the special institutions of French Canada. The English-speaking people of the old province of Quebec strongly protested against the change, but the younger Pitt, then at the head of affairs in England, deemed it the wisest policy to separate as far as practicable the two nationalities

¹ "Narrative and Critical History of America," edited by Justin Winsor, vii., 205.

instead of continuing their political union and making an effort to bring about an assimilation of language and institutions. It was a policy intended to act in the interests of peace and harmony, since it was then believed in England by others beside Pitt that the two races would more happily and successfully work out their political fortunes apart from each other in those early days. By the beginning of the present century there were in the British North American provinces, now the Dominion of Canada, five distinct provinces governed by the following authorities :

A governor-general in the province of Lower Canada, then the most important—exercising a nominal supervision, as the representative of the sovereign, over all British North America.

A lieutenant-governor in Nova Scotia, New Brunswick, Prince Edward Island, and Upper Canada.

An executive council in the provinces of Upper and Lower Canada, generally composed of members of the legislative council.

A legislative council in each province, appointed by the crown—in Nova Scotia, New Brunswick, and Prince Edward Island, also exercising executive functions.

An assembly, elected by the people on a limited franchise, in all the provinces.

The total population of all British North America did not at that time reach one hundred and eighty thousand souls, of whom at least one hundred thousand were French Canadians. Nova Scotia was then confined to her present provincial limits ; Cape Breton was a distinct province for some years under the administration of a lieutenant-governor and an executive council until it was finally united in 1820 to Nova Scotia ; New Brunswick extended from the Gulf of St. Lawrence on the east to the ill-defined boundary of Maine on the west, and from Lower Canada on the north to the Bay of Fundy and Nova Scotia on the south. Lower Canada was then confined to the country on both sides of the St. Lawrence River, from Labrador and the Gulf to the river Ottawa, which formed the eastern boundary of the

province of Upper Canada, which extended indefinitely westward to Lakes Huron and Superior, and was bounded on the south by the St. Lawrence River and the Lakes. By 1800 we find that the present Dominion and the United States had practically entered on the work of developing the great country now within their respective jurisdictions. The remarkable vigor and enterprise displayed by the people of the new federation from the very commencement of their history as an independent nation, gave them a vantage-ground at the outset over provinces with diverse nationalities and interests, without any common bond of union except their fealty to England, whose public men and people, as a rule in those days, took little interest in their development, and many of whom always seemed possessed by the idea that it was only a question of time when these countries would be absorbed in the American union of States. Assuredly no one could, in those early days of struggle, have ventured on the prediction that, long before the century closed, these isolated provinces would be able to present a bold front to the energetic and prosperous communities to their south, eventually become a strong factor in the development of the wealth of this continent, and actually impose an effectual barrier to the ambition of the republic itself.

The period which extends from 1800 to 1840, was distinguished by the remarkable progress made by the United States in population, wealth, and national strength. Spain and France left the valley of the Mississippi for ever, and the United States at last possessed a vast territory extending on the north from British North America, the Hudson's Bay Territory, and Rupert's Land to Mexico and the Gulf of Mexico on the south, and on the east from the Atlantic to the Pacific Ocean on the west, where the nation claimed a great range of coast reaching even beyond the Columbia River, and embracing the valuable Oregon country. The tide of population continued to flow steadily through the passes and valleys of the Alleghanies and to build up the great West. By 1840 the total population of the United States was nearly eighteen millions, of whom

a million and a half now lived in Ohio, seven hundred thousand in Indiana, five hundred thousand in Illinois, over thirty-one thousand in Wisconsin—all States carved out of that Northwest which was once claimed by France, and might have remained in English hands had English statesmen been more firm and had felt any confidence in the future of Canada. The Federal Union of 1789 had, during this period, increased from thirteen to twenty-six States—in itself very eloquent evidence of the material development of the country and of the success of the federal system of government.

During this period of forty years Canada passed through some of the most trying crises of her history, which have largely influenced her political and material development to the present time. With the causes of the war of 1812 the Canadian people had nothing whatever to do; it was quite sufficient for them to know that it was their duty to assist England with all their might and submit to any sacrifices which the fortunes of war might necessarily bring to a country which became the principal scene of conflict. No Canadians would willingly see a repetition of that contest between peoples who should be always friends, but they can nevertheless look back to the history of the struggle with the conviction that, wherever duty claimed the presence and aid of Canadians, they were ready and never failed to show their ability to defend their land and homes. The history of the battles of Queenston Heights, Stoney Creek, Chrysler's Farm, Chateauguay, and Lundy's Lane shows that they were not won by English regulars exclusively, but that in all of them the Canadian volunteers well performed their part. At Chateauguay, Colonel De Salaberry, a French Canadian officer, with a small force of three hundred Canadians, gained so signal a victory over General Hampton, with some four thousand men, that he was forced to retreat from Lower Canada.¹ At Chrysler's Farm, General Wilkinson,

¹ See Henry Adams, "History of the United States," vii., 192-96. American and Canadian accounts differ as to number of Hampton's force. I take Adams statement as probably the most accurate, since it agrees with Christi ii., 124).

with at least three thousand men, was beaten by some eight hundred English and Canadians under Colonel Morrison.¹ Ontario, then Upper Canada, with a population of about eighty thousand souls at the most, was the only province that really suffered from the war. From the beginning to the end its soil was the scene of the principal battles; the town of Niagara and the public buildings of York, now Toronto, were burned and a great amount of valuable property destroyed by the invading forces. The war taught the United States that there was greater strength in Canada than they believed when they commenced hostilities. "On to Canada" had been the cry of the war party in the United States for years; and there was a general feeling that the upper province could be easily taken and held until the close of the struggle when it could be used as a lever to bring England to satisfactory terms or else be united to the federal union.² The result of the war showed, however, that the people of the United States had entirely mistaken the spirit of Canadians and that the small population scattered over a large region, with hardly a town of any large importance, was animated by a stern determination to remain faithful to England. Canadians came out of the conflict with a confidence that they had never felt before, and of their ability to maintain themselves in security on the St. Lawrence and the Great Lakes. If Canadians gained confidence in their future, the United States themselves began to develop a national sentiment which increased in strength from that time forward until the close of the great Rebellion which gave a death-blow to the dangerous and unsound principle of State sovereignty and increased so largely the power of the central government.³ Although the war ended without any definite decision on the questions at issue between the United States and England, the rights of

¹ "This was the least creditable of the disasters suffered by American arms during the war. No excuse or palliation was ever offered for it."—Henry Adams, "History of the United States," vii., 189.

² *Ibid.*, vi. 141, 146, 212.

³ See "The Effect of the War of 1812 upon the Confederation of the Union," by Dr. N. M. Butler, in "Johns Hopkins University Studies," fifth series, vii.

neutrals were strengthened and the pretensions of England as to the right of search are not likely to be urged again in times of war. One important result of the war was the fact that it re-opened the question of the fisheries. I have already stated that the treaty of 1783 had conceded large rights and liberties to the fishermen of the United States on the banks and coasts of Newfoundland and of the maritime provinces of British North America. The people of that country had claimed substantially that they had an original and prescriptive right in the fisheries which they had used as British subjects in North America. In the treaty of 1783 they were given the "right" to fish on the Grand and other banks of Newfoundland and in the Gulf of St. Lawrence and "at all other places in the sea, where the inhabitants of both countries used at any time heretofore to fish"; but they were to have only "the liberty" of taking fish on the coasts of Newfoundland, and also of "all other of his Britannic Majesty's dominions in America; and also of drying and curing fish in any of the unsettled bays, harbors, and creeks of Nova Scotia, [then including New Brunswick] Magdalen Islands, and Labrador, so long as the same shall remain unsettled." In the one case, it will be seen, there was a recognized right, and in the other only a mere liberty or privilege extended to the fishermen of the United States. This clause in the treaty was one of the concessions which Oswald conceded to the persistence of the American Commissioners who attached great importance to the fisheries of the provinces; but after the close of the war of 1812, when it was necessary to consider the terms of peace, the English government took a decided ground that the war had repealed these temporary liberties and refused to extend them except the free navigation of the Mississippi was again conceded to the English. Indeed the Americans would have obtained all their old advantage had they been prepared to accede to the English proposition.¹ The contention of the federal government was to the effect that the treaty of

¹ See Henry Adams, "History of the United States," ix., 44-53.

1783 was of "a peculiar character," and that because it contained a recognition of American independence it could not be even in part abrogated by a subsequent war between the parties that had agreed to its provisions. The propositions laid down by the British government in answer to this extraordinary claim, are unanswerable. It was clearly impossible for England "to give to her diplomatic relations with one state a different degree of permanency, from that on which her connection with all other states depends." She could not consider "any one state at liberty to assign to a treaty made with her such a peculiarity of character as shall make it, as to duration, an exception to all other treaties, in order to found, on a peculiarity thus assumed, an irrevocable title to all indulgences, which have all the features of temporary concessions." In short it was correctly argued that "the claim of an independent state to occupy and use at its discretion any portion of the territory of the other, without compensation or corresponding indulgence, cannot rest on any other foundation than conventional stipulation." To quote the language of an able English writer on international law, this "indefensible pretension" was abandoned in the treaty of 1818, and "fishery rights were accepted by the United States as having been acquired by contract."¹ The convention of 1818 forms the legal basis of the rights which Canadians have always maintained in the case of disputes between themselves and the United States as to the fisheries on the coasts, bays, and harbors of Canada. It provides that the inhabitants of the United States shall have forever the liberty to take, dry, and cure fish on certain parts of the coast of Newfoundland, on the Magdalen Islands, and on the southern shores of Labrador; but they "renounce forever any liberty, heretofore enjoyed" by them to take, dry, and cure fish, "on or within three marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America"; provided, however, that "the American fishermen shall be admitted to enter such bays and harbors for the

¹ Hall, "A Treatise on International Law," (3d ed.) pp. 97-99.

purpose of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever." And American fishermen at the same time are to be "under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them." It seems that in the original draft of the treaty the word "bait" appeared after "water," but it was left out in the final agreement when the commissioners of the United States found that they must concede this and other liberties previously enjoyed in order to obtain as extensive a territory as possible for inshore fishing. Between 1818 and 1854, when a reciprocity treaty was arranged between the United States and the provinces of British North America, fishing vessels belonging to the former country were frequently detained, seized, and in some cases condemned for the following evasions of the convention of 1818:

1. Fishing within the prescribed limits.
2. Anchoring or hovering inshore during calm weather without any ostensible cause, having on board ample supplies of wood and water.
3. Lying at anchor, and remaining inside the bays to clean and pack fish.
4. Purchasing and bartering bait, and preparing to fish.
5. Selling goods, and buying supplies.
6. Landing and transshipping cargoes of fish.¹

Until 1854, there was much correspondence between the governments of England and the United States on the subject of the treaty, and every effort was made by American fishing vessels to evade the stipulations of the agreement. The interests of Canada were, in a measure, protected by the convention of 1818; for, had the treaty of 1783 remained in operation, serious disputes must have arisen, the

¹ From a "Review of President Grant's Recent Message (Dec., 1870) to the U. S. Congress, Relative to the Canadian Fisheries and the Navigation of the St. Lawrence River," p. 11. This pamphlet was understood to be written or inspired by Mr. Mitchell, minister of marine and fisheries, in the Canadian government.

maritime provinces of Canada would have been practically handed over to New England, and a doctrine established, as far as Canada was concerned, entirely at variance with sound usage and international law. In the case of a division of territory between two nations originally one, the new state can properly claim the sole enjoyment of all local and territorial rights, which are natural and necessary adjuncts of its actual territorial possessions. The old state, from whom the new state has separated, does not lose any of its own distinct local and territorial rights, which naturally and necessarily appertain to it as a national sovereignty; and yet this is what the government of the United States practically contended when they urged a prescriptive right in fisheries which, within the limits recognized by the law of nations—three miles from the coasts and bays,—remained as much British possessions as the land or shore washed by those territorial waters. It is obvious that each state must retain all its territory, and all those rights appertaining to that territory, necessary to its existence as a separate nation, and no other state can claim a common right to the use of such territory, except under an express conventional agreement with the state to whom that territory belongs.

Looking at its general results, however, the war of 1812-15 gave no special advantage to the Canadian people. When peace was proclaimed, not an inch of Canadian territory was held by American troops. On the other hand, England held during the war all the territory of Maine between the St. John and the Penobscot. Her flag also flew over Mackinaw, the key to the Northwest. "It is not impossible," says an American writer, "that the war of 1812 for a time revived English hopes of again recovering the Northwest. . . . Only three of the thirty-two years lying between 1783 and 1815 were years of war; but for one half of the whole time the British flag was flying on the American side of the boundary line. In the largest sense, therefore, the destiny of the Northwest was not assured until the treaty of Ghent." ¹ Had the English seized this opportunity of finally settling the western bound-

¹ Hinsdale, "The Old Northwest," p. 185.

ary of New Brunswick, the difficulties that afterwards arose might have been for once and all settled, and Canada would have obtained a territory most useful to the commercial development of the present Dominion.¹ But, in all probability, the victory gained by the United States at Plattsburg, the failure of the attempt on Baltimore, and Drummond's repulse at Fort Erie, had much influence in inducing England to come to terms with the republic²; and it was fortunate for the provinces that they were allowed, in the end, to control their most valuable fisheries. Fate had decreed that the Mississippi River should flow continuously through the lands of the new nation, and that Canada should find in the valley of the St. Lawrence one of the chief sources of her prosperity and future greatness.

Before the close of the period which we are considering, clouds again appeared on the Canadian horizon, arising out of the political troubles in Upper and Lower Canada. The war of 1812 had deeply absorbed the attention of the Canadians, and quieted their political differences for the while; but, with the coming of peace, discontent gradually spread among the people in the provinces, in consequence of all power being practically concentrated in the governors and the executive and legislative councils,—these bodies being virtually the nominees of the former. The representatives of the people in the several elective assemblies were demanding that the legislative councils should be elected by the people, and that the people's House should have control of the revenues and expenditures, and that a larger measure of self-government, in short, should be conceded to the provinces. In Upper Canada, as indeed was the case in all the provinces, a bureaucracy ruled, and the name

¹ Henry Adams, "History of the United States" (ix., 7 *et seq.*), refers to the demands made by the Canadians for the protection of their interests, "ignorantly and wantonly sacrificed by the treaty of 1783." On the other hand, Secretary Monroe (afterwards President) suggested "the transfer of the upper parts and even the whole of Canada, to the United States."—*Ibid.*, p. 11.

² See *Ibid.*, (ix., 35-42), who shows that the Duke of Wellington, who had no ambition to go to Canada, influenced the imperial government in abandoning its claim for territory.

"family compact" was given, in derision, to the governing class. The home government had too often in those days treated colonial affairs with indifference, and attempted by the assistance of a few clerks to manage matters which should have been left to the sole control of the colonial communities. The governors were in the very nature of things so many autocrats who depended for advice and support on crown-appointed officials, and were necessarily brought into conflict with the popular houses that were always demanding the extension of their privileges in accordance with sound principles of parliamentary government. The imperial authorities were no doubt dilatory in providing effective remedies; they were too often misled by choleric military governors, little versed in political science; they were frequently in a quandary on account of a division of opinion among the various provincial leaders who were suggesting means of settling existing difficulties. Looking calmly and dispassionately at the history of those times we must admit there is no reason to conclude that British ministers were disposed to do the people a grievous injustice, and sooner or later the questions at issue must have found a satisfactory solution. But Papineau, an impassioned orator and a rash popular leader, led a number of his French Canadian compatriots into a rebellion which was easily repressed. In Upper Canada a little, peppery Scotchman of the name of MacKenzie, who had done much in the press, and in the legislature to expose the defects and weaknesses of the political system, became impatient at the last, when public grievances failed to obtain ready redress, and followed Papineau's example only to see his conspiracy exposed and defeated before it obtained any headway. In no province were the mass of the people willing to join in a rebellion to gain political privileges which could be won in the end by steady constitutional agitation, and the exercise of a little patience on the part of its advocates. In the lower provinces Mr. Howe and other leaders of the popular party maintained a strictly constitutional attitude and publicly censured Papineau and MacKenzie for their rash appeal to arms.

Papineau and some of his friends went into exile, and several unruly spirits suffered death on the scaffold, though on the whole the English government acted with lenity through this trying ordeal. MacKenzie fled to the United States, and whatever sympathy he may have won by his attacks on public grievances before the outbreak of the rebellion—if we can so characterize a mere revolt of a relatively few discontented spirits—it must have been largely alienated by his subsequent conduct. A cool, collected patriot would have recognized the fact that the people would not sustain him in further attempts to create a civil war; but he industriously set to work to violate the neutrality of the country by collecting bands of ruffians in the city of Buffalo, for the purpose of invading Canada. The consequence was that the frontier of Upper Canada was kept for months in a state of fever by his criminal conduct, and the two countries were brought to the verge of war. As in the case of the Fenian invasion many years later, the authorities of the United States were open to some censure for negligence in winking at these suspicious gatherings avowedly to attack a friendly country. In fact, guns and ammunition were openly taken from arsenals of the government, and a regiment of militia was quietly looking on while all these preparations were being made for the invasion of Canada. The raiders seized an island just above Niagara Falls on the Canadian side, as a base of operations, and a vessel was freely allowed to ply between the island and the mainland with supplies. It became necessary to stop this bold attempt to provide the freebooters on Navy Island with the munitions of war, and a Canadian expedition was accordingly fitted out to seize the *Caroline*, the vessel thus illegally employed. As it happened, however, the vessel was found on the American side; but at such a time of excitement men were not likely to consider consequences from the point of view of international law. She was cut from her moorings on the American side, her crew taken prisoners, one man killed, and the vessel set on fire and sent over the falls of Niagara. This was clearly one of those junctures when no other means were

available for protecting Canada from the lawless attacks of men who found the *Caroline* of great assistance in their intended raid on Canadian territory. The United States authorities had made no special effort up to this moment to prevent this unwarrantable use of their soil by ruffians, and the Canadians were forced by every consideration of self-protection to take the law into their own hands. There was probably a technical violation of the territory of the United States, but looking now at the whole question dispassionately, one cannot help feeling that a little more determination on the part of the government of the United States would have prevented all the difficulty that afterwards arose when they demanded an apology for an act which was necessary on account of the absence of that "due diligence" which they afterwards pressed in the case of the *Alabama*.¹ The government of the United States, however, subsequently recognized their obligations to Canada and took measures to vindicate the neutrality of their territory.²

¹ See Hall, "International Law," pp. 267, 268.

² The press of the State of New York took an active part in encouraging these raids into Canada, and one wild writer gave expression to the following poetic tribute to the ill-fated *Caroline*, which, one would suppose, was as worthy of public admiration as the American warship *Constitution* in the memorable days of 1812:

"On—wildly onward—sped the craft,
As she swiftly neared the verge;
And the demon-guards of the black gulf laughed,
And chanted a hellish dirge;
And the booming waters roared anew
A wail for the dead and dying crew.

"As over the shelving rocks she broke,
And plunged in her turbulent grave.
The slumbering genius of Freedom woke,
Baptized in Niagara's wave,
And sounded her warning tocsin far,
From Atlantic's shore to the polar star."

Taken from the *Rochester Democrat*. See Dent, "Canada since the Union of 1841," i., 162.

As we have already said, the year 1840 was a turning-point in the history of the material and political development of British North America. The two Canadas were reunited under the name of the Province of Canada, and the basis was laid for the complete measure of self-government that is now enjoyed by all the communities of the present Dominion. Responsible or parliamentary government, by which a ministry can hold office only whilst it enjoys the confidence of a majority of the popular branch or Commons House, obtained full recognition in the provinces after a stern battle with the home authorities. The Canadian legislatures were given control of their revenues and expenditures, and year by year received additional concessions from the imperial government in accordance with the new policy which was practically commenced by Lord John Russell in 1839, and carried out by his immediate successors in the administration of colonial affairs. The total population of British North America now exceeded one million of souls, of whom at least six hundred thousand were French Canadians, who looked for a time with suspicion on the union under the belief that it was a direct blow against their special institutions. As the years passed by, however, they found that they were treated in a spirit of justice, and were able to exercise a potent influence in political affairs. From 1840 to 1867 the relations of Canada and the United States became much closer, and more than once assumed a dangerous phase. In 1840 the authorities of New York arrested one Macleod on the charge of having murdered a man who was employed on the *Caroline*. It appeared, however, on inquiry that Macleod had not actually assisted in the capture of the vessel, and that the charge rested on the doubtful evidence of some questionable characters, who declared he had been heard to boast of his part in the exploit. The British government, at once took the sound ground that, in any case, the destruction of the *Caroline* was a "public act of persons employed in her Majesty's service, and that it could not be justly made the occasion of legal proceedings in the United States against

the individuals concerned, who were bound to obey the authorities appointed by their own government." The Washington government evaded the whole question at issue by throwing the responsibility on the State authorities and declaring that they could not interfere with a matter which was then within the jurisdiction of the State courts. The matter gave rise to much correspondence between the two governments, but happily for the peace of the two countries the courts acquitted Macleod, as the evidence was clear that he had had nothing to do with the actual seizing of the *Caroline*, and the authorities at Washington soon afterwards acknowledged their responsibility in such affairs by passing an act directing that subjects of foreign powers, if taken into custody for acts done or committed under the authority of their State, "the validity or effect whereof depends upon the law of nations, should be discharged."¹ The imperial government throughout this affair acted in a spirit of much forbearance, and simply with the object of obtaining the acknowledgment of a sound principle of international law, and it must be admitted that the Washington authorities showed an unwillingness to move determinately in the matter which was very irritating to Canadians, although allowance must be made for the fact that in those days the government of the Federal Union was weak and the principle of State sovereignty was being pressed to the extreme limit. But on this point an able Canadian publicist has truly said that a "nation cannot relieve itself of responsibility by so constituting its government as to put it out of its power to discharge its duties to other sovereign states."² The government of the United States, I have just shown, acknowledged the soundness of this doctrine by passing a statutory enactment.

Two other questions were settled during this important period in Canadian history, after having imperilled the peaceful relations of the two countries for years. By 1840

¹ See Hall, "International Law," pp. 311-313.

² Hon. David Mills on the Behring Sea question. See *Toronto Globe*, August 3, 1890.

the question of the disputed territory between Maine and New Brunswick had assumed grave proportions. In a paper of this character it is impossible to do more than outline the opinions always entertained by Canadians on a question of a very complicated character, to which reams of literature have been devoted in the past. The first effect of the dispute on the material development of Eastern Canada was the failure of an effort that was made in 1835 to construct a line of railway from Quebec to St. Andrews, on the Bay of Fundy, on account of the clamor raised by the people of Maine on the ground that the road would run through territory which they claimed as their own. By the treaty of 1783, the boundary was to be a line drawn from the source of the St. Croix, directly north, to the highlands which divide the rivers which fall into the Atlantic Ocean from those which fall into the river St. Lawrence; thence along the said highlands to the northwesternmost head of the Connecticut River; and the point at which the due north line was to cut the highlands was also designated as the northwest angle of Nova Scotia. The whole question had been the subject of several commissions and of one arbitration from 1783 to 1842, when it was finally settled. Its history appears to be that of a series of blunders on the part of England from the beginning to the end. The first blunder, it is claimed, was made in 1798, when it was decided to make the eastern branch of the St. Croix, or the Chiputnaticook, the line of boundary, instead of the western branch, the Schoodic, which seems to have been the true St. Croix of early times, and of which the source is some fifty miles distant from the source of the eastern branch. The result was that when the line due north came to be drawn from the source of the St. Croix, now decided to be the eastern branch, a large and valuable slice of English territory was practically given up to Maine. The next grave mistake was made by Lord Palmerston in not accepting a proposal made by President Jackson to ascertain the true north-western angle of Nova Scotia, or the designation of the highlands, in accordance with certain well understood rules

in practical surveying which have been always considered obligatory on this continent. A Canadian engineer of the highest standing in his profession has very clearly explained the effect of this reasonable proposition:

"The boundary as far as the head of the minor branch of the St. Croix had been agreed upon by both nations, and a monument had been erected as a fixed point of departure. It was now proposed and urged by the United States to discard the due north line, to seek west of that line the undisputed highlands which divide those rivers which empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean, to find the point in the 'watershed' of these highlands nearest to the north line, and to trace a direct course from it to the monument already established. If this principle had been adopted, a straight line would have been drawn from the monument at the head of the Chiputnaticook to a point which could have been established with precision in the 'watershed' of the highlands which separate the sources of the Chaudière from those of the Penobscot; here being the most easterly point in the only highlands agreeing beyond dispute with the treaty. The point is found a little to the north and west of the intersection of the 70th meridian west longitude, and the 46th parallel of north latitude."¹

For some unexplained reason, probably from entire ignorance of the whole question, the British government refused to accept the reasonable offer made by President Jackson, and the question was allowed to remain in abeyance until it was submitted to Daniel Webster and Alexander Baring—better known in the history of those times as Lord Ashburton,—who were chosen by the governments of the United States and England, respectively, to arrange all matters of controversy between the two countries. The result was a compromise by which the United States obtained seven twelfths, and the most valuable section of the disputed territory, and Canada a much smaller and comparatively valueless tract of land. In fact, after half a century of controversy, the English government gave up to the United States, in all, eleven thousand square miles of land, or the combined areas of Massachusetts and Connecticut. It would be impossible to disabuse the great majority of Canadians of the fixed idea, which has come to them as the heritage of those badly

¹ Sandford Fleming, "The Intercolonial: A History, 1832-1876," pp. 5-39.

managed negotiations, that their interests were literally given away by the too conciliatory and amiable English envoy who knew nothing of the question, and was quite indifferent, like most Englishmen of those days, to Canadian matters. Lord Ashburton received the thanks of the British Parliament, ostensibly for removing a long-standing cause of irritation between two nations—a wise and commendable motive when it is not attended with injustice to one of the parties to the settlement, that party being in this case Canada. In reality he should have been thanked for enlarging the area of Maine. Several facts connected with this international episode have always prevented Canadians looking at the result with feelings of self-gratulation. In the first place, the choice of the plenipotentiary was unfortunate, since he had lived and married in the United States, had large pecuniary interests in that country, and had no special training to fit him to compete with so acute and masterly an intellect as Daniel Webster's. In the next place, too lavish, even fulsome adulation was showered upon Lord Ashburton wherever he went in the United States; he was described by one of the newspapers as "an Englishman, indeed, to the heart's core, yet one who cherishes strong attachments to the republic."¹ In the third place it is interesting to note that Mr. Webster named one of his grandsons after this complaisant and easily managed Englishman. And finally, Canadians have never been satisfied with the part played by so able a statesman as Mr. Webster when Mr. Rives, at his request, produced in the Senate a map which the former had had in his possession throughout the whole negotiations, sustaining the claim which England had always made to the disputed territory. This map, which was found among the French archives in Paris by the historian Jared Sparks, was kept studiously concealed, until it was thought necessary to make an effort to show the people of Maine that they ought to be well satisfied with nearly two thirds instead of the whole loaf.

¹ See New York *Commercial Advertiser*, quoted in Dent's "Canada," vol. i., p. 206, note.

For my part I do not attach much importance to any maps that could be produced by either party in support of its pretensions. All of them were largely inaccurate, too often mere guesswork on the part of their draughtsmen. It is even said that a map was brought forward in the English Parliament to prove that Lord Ashburton had not actually surrendered everything, as it was strongly contended by the press and statesmen of the Liberal party.¹ I believe that under any circumstances the negotiators had made up their minds from the outset to a compromise, and that Lord Ashburton was practically pledged to a settlement at any price, even if it gave up all the territory in dispute to the United States. The isolated provinces in those days were endeavoring to establish the principles of local self-government on sound foundations, and had little or no opportunity of exercising any direct influence in imperial councils on this question. If we look at the map we will see at a glance the important effect of this settlement upon the territorial limits of the present Dominion. The State of Maine now presses like a huge wedge into the provinces of New Brunswick and Quebec. As already stated, the persistency of Maine, fifty years ago, stopped railway communication between the Upper and Lower provinces, and practically prevented the development of intercolonial trade until after 1867. In these later times a "Canadian short line" railway has been forced to go through Maine in order to connect Montreal with Fredericton, St. Andrews, and the maritime provinces gen-

¹ A somewhat curious incident occurred in the course of the Oregon controversy. Mr. Buchanan, when secretary of state at Washington in 1845, stated in one of his despatches to Mr. Pakenham, the English plenipotentiary: "Even British geographers have not disputed our title to the territories in question. There is a large and splendid globe now in the Department of State, recently received from London, and published by Maltby & Co. 'manufacturers and publishers to the Society for the Diffusion of Useful Knowledge,' which assigns this territory to the United States." The real fact was, the globe in question had been ordered for the United States by Mr. Everett, when minister to England, and the boundary was marked by the maker to please the purchaser. Mr. Everett disclaimed having had any share in the imposition, the moment his attention was drawn to the fact. See the *Quarterly Review*, vol. lxxvii., p. 567, note.

erally. Had the true St. Croix been chosen in 1798, or even President Jackson's offer been accepted, this line would go entirely through Canadian territory, and be entirely controlled by Canadian legislation. It would solve many difficulties that have arisen as to the question of providing the shortest possible communications between the Atlantic and the great West of the Dominion through exclusively Canadian territory.

During this period was settled another question which was the subject of much heated controversy between England and the United States for more than a quarter of a century, and in 1845 brought the two countries very close to war. In 1819 the United States obtained from Spain a cession of all her rights and claims north of latitude 42° , or the southern boundary of the present State of Oregon. By that time the ambition of the United States was not content with the Mississippi valley, of which she had at last full control by the cession of the Spanish claims and by the Louisiana purchase of 1803, but looked to the Pacific Coast where she made pretensions to a territory stretching from 42° to $54^{\circ} 40'$ north latitude, or a territory four times the area of Great Britain and Ireland, or of the present province of Ontario. The claims of the United States to this region, which were persistently urged until 1846, when they were for the most part conceded, rested on prior discovery and exploration and on the cessions by Spain and France. Only a few points of the complicated discussion that took place between England and the United States on the question can be adduced in this paper, but they are the most material to the issue, in fact those on which the rights of the two contestants practically turned. It was claimed on the part of the United States that a master mariner named Gray first discovered the Columbia in 1792, and thereby gave them a title to the countries watered by that great river; that subsequently Lewis and Clark, acting under the instructions of the Washington government, from 1805-6, explored the Oregon country; that that government from that day by various official and legislative acts assumed the country to

be their own, regularly acquired under the law of nations ; that subsequently John Jacob Astor and other citizens of the United States established a post in the valley of the Columbia, which was seized by the English troops and restored after the war of 1812 ; that American citizens flowed into the country between 1840 and 1845, until in the latter year there were over 4,000 people in Oregon. On the other hand the English always contended that the Pacific Coast, from 42° to Nootka Sound in $49^{\circ} 33'$, had been discovered and actually surveyed by her own navigators ; that Drake had called the country New Albion in 1579 ; that Cook entered Nootka Sound in 1778, and that Vancouver in 1792 noticed what appeared to be a great river outside a bar, but, unfortunately for himself and England, passed it : that afterwards hearing from Gray of his discovery, he sent his tender under Lieutenant Broughton up the river ; that the latter actually navigated it for at least one hundred miles, and took possession of the country for England ; that Gray, having mistaken the proper channel, never actually ascended the river proper ; that Alexander Mackenzie first of white men explored in 1793 the country drained by the Fraser River, west of the Rocky Mountains, or the whole of the country north of 49° to which the United States made a claim ; that Thompson, another famous British explorer, established the first settlement, or post of any kind, west of the same mountains, and explored the main river of the Columbia, while Clark and Lewis only explored the southern tributaries ; that the Hudson's Bay Company had, previous to any settlement by citizens of the United States, established several posts or forts in a territory where they had the right to trade under charter from the English king ; that the rights of Astor's company, which had erected a post at Astoria, were legally conveyed, in 1813, to the English Northwest Company, and during the war of 1812 the English flag was hoisted on that post ; that the majority of Astor's company in the inception were English subjects ; that when the post was restored without due consideration at the end of the war the question of sovereignty was left to be settled

by subsequent treaty. Now looking fairly at claims to territorial sovereignty so very contradictory, we can see, in the first place, that while Gray was certainly the first man who entered the Columbia, he was not fortified by any commission from the United States, and did not take possession of the country by any formal act. "A discovery not previously authorized by the nation," says Mr. David Dudley Field, an American authority on international law who on this point agrees with Phillimore and other writers on the same subject, "cannot be subsequently ratified by it to the prejudice of any other nation, without the consent of the latter."¹ Consequently the mere explorations of Lewis and Clark, any resolutions or measures of Congress, or proclamations of Presidents, were valueless if England had a valid claim to the territory previous to Gray's discovery. The settlements made by American citizens in later years, in their desire to strengthen the claims of the United States, did not make the region a portion of that country in the face of the English pretensions; no more than did the settlements in that part of New Brunswick ceded in 1842 to the United States, give an English title to that district. If Gray's discovery did not give an inchoate title to the region, since he had no national or official standing, then the acts of Broughton, who was regularly commissioned and took formal possession of the country, gave greater strength to the English claim, which was based, in the first instance, on the discovery, exploration, and survey of the Pacific Coast. The explorations, by Mackenzie and Thompson were also in the direction of strengthening the claim, which the discovery of the continental sea-coast gave to the English, "to the interior, to the sources of the rivers emptying within the discovered coast, to all their branches, and the territory watered by them."² The claims of the

¹ Mr. David Dudley Field, cited in a valuable paper on "The Development of International Law as to the Newly Discovered Territory" by W. B. Scaife, in the Papers of the American Historical Association, July, 1890, p. 80.

² Mr. David Dudley Field. See article already cited from Papers of Am. Hist. Association, July, 1890.

English then certainly so far, when viewed in the light of the admitted principles of international law, seem much stronger than those of the United States. But here rises the question of settlement and occupation, which must within a reasonable time follow discovery. Of what value, in this argument, must be considered the position of the Hudson's Bay Company in Oregon, or Thompson's settlement on Fraser's Lake. The mere explorations of Mackenzie and Thompson were certainly not that occupation, in the legal sense which should follow discovery, and the same remark applies to Lewis and Clark's expedition. The history of Astoria does not establish any valid claim; the ground it occupied, indeed, was not recognized United States territory; the company actually sold out its claim to an English company, regularly established under an English charter on land claimed to be England's. The restoration of the post was assuredly a blunder, but it did not give a title to a disputed territory. The fact that the Hudson's Bay Company occupied the region, is adduced in support of the English claim; but how far the erection of forts and posts by a mere fur-trading corporation can establish legal occupation and settlement, is a question. One thing certainly must be admitted: the charter granted to that huge monopoly—the creation of a spendthrift king, in the first instance, and the pet of English governments, long indifferent to Canadian interests—was a great injury to this continent for a hundred years. It was a power behind the throne in the Oregon controversy, ever resisting the United States claims for its own selfish purposes, and at the same time imposing an irresistible barrier to that settlement which would be destructive of their commercial interests in a region as large as Europe in the days when Oregon was in dispute. For years it kept from the world the knowledge of that great Northwest, to which the hopes of Canada now turn with so much confidence in the working out of her grand schemes of internal development. But the United States urged other claims to the vast region than those just reviewed. The cession by Spain of all her rights on the Pacific Coast above

42° was also brought forward as substantial evidence of the soundness of the title of the United States. The voyages of Juan Perez and Don Bruno Heceta, in 1774 and 1775, were not made known to the world by Spain until long afterwards, in 1802; and the discovery of Nootka Sound was certainly due to the English and not to them. The Spanish navigators did not enter the Columbia, if they ever really saw it, and certainly never attempted any occupation and settlement of the coast. England, by the convention of 1790, made Spain recede from her pretensions to the coast, northward of the Spanish settlements, and open it for trade and settlement to other nations. This convention, however, was purely commercial, and was virtually renewed in 1815; but in any case it simply left the respective claims of England and Spain in abeyance,—did not establish the sovereignty of either in Oregon. Neither did the Louisiana purchase give greater force to the United States claim; for it is not established that France ever claimed that Louisiana extended to the Pacific. In fact, Spain, by her treaty of 1819, showed she believed she had alone rights on the Pacific Coast. The weakness of this union of claims was long ago exposed by an able critic in the *North American Review*.

“We cannot pile these pretensions one upon another; their force is not cumulative, but disjunctive. If Spain actually surveyed the coast, and discovered the mouth of Columbia, in 1775, then Captain Gray, in 1792, and Lewis and Clark, in 1805, were only intruders; and, on the other hand, if the discoveries of Gray, Lewis, and Clark make out a perfect right,—if their *explorations*, in fact, can be called *discoveries*, then Oregon was vacant and unappropriated,—a mere *terra incognita*, open to the first comer,—down to 1792, and the antecedent claims of France and Spain are mere nonentities.”¹

I have dwelt on these important points of this international question, to show how difficult it was to come to a perfectly judicial conclusion when both parties persistently

¹ See the *Quarterly Review* for 1845-6 (vol. lxxvii., pp. 526-63), where the whole English case is ably argued in all its aspects. The case of the United States is fully stated in a recent work on Oregon in the American Commonwealth Series. I have also consulted on this question all the most important works cited in the introduction of Barrows' work.

urged claims, based on such contradictory facts, to the same territory. It was certainly, under the circumstances, a question for compromise. The people of the United States, conscious at last of the importance of the territory, began to bring their influence to bear on the politicians, until by 1845 the Democratic party declared for "54° 40', or fight." Mr. Crittenden announced that "war might now be looked upon as almost inevitable." Happily, President Polk and Congress came to more pacific conclusions, after a good deal of warlike "talk"; and the result was a treaty, by which England was satisfied with the line 49° to the Pacific coast, and the whole of Vancouver Island, which, for a while, seemed likely to be divided with the United States. In fact, England yielded all she had contended for since 1824, when she first proposed the Columbia as a basis of division. But even the question of boundary was not finally settled by this great victory, won for the United States by the persistency of her statesmen. The treaty of 1846 continued the line of boundary westward along "the 49° parallel of north latitude, 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." Any one reading this clause for the first time, without reference to the contentions that were raised afterwards, would certainly interpret it to mean the whole body of water that separates the continent from Vancouver,—such a channel, in fact, as divides England from France. But it appears that there are a number of small channels which run through the islands of the great channel in question, and the clever diplomatists at Washington immediately claimed the Canal de Haro, the widest and deepest, as the channel of the treaty. Instead of at once taking the ground that the whole body of water was really in question, the English government claimed another channel, Rosario Straits, inferior in some respects, but the one most generally and indeed only used at the time by their vessels. The importance of this difference of opinion chiefly lay in the fact that the Haro gave San Juan and other small islands, valu-

able for defensive purposes, to the United States, while the Rosario left them to England. Then, after much correspondence, the British government, as a compromise, offered the middle channel, or Douglas, which would still retain San Juan. If they had always adhered to the Douglas, which appears to answer the conditions of the treaty since it went through the middle of the great channel, their position would have been much stronger than it was when they came back to the Rosario. By the Reverdy Johnson agreement of 1867, the several issues connected with the clause—the whole channel or the small channels—were to be submitted to arbitration, but it never reached the Senate. The English representatives at the Washington convention of 1871 attempted to have a similar reference, but the United States Commissioners, aware of their vantage-ground, would consent to no other arrangement than to leave to the decision of the Emperor of Germany the question simply whether the Haro or the Rosario channel came within the meaning of the treaty, and he decided in favor of the United States. This decision is said to have been assisted by the fact that “in the royal library of Berlin, near to which the court of arbitration was held, a library rich in maps and charts, the Haro was the only channel named for the region.”¹ It is also stated on the same authority, that Senator Benton, Mr. Bancroft, and Mr. Buchanan, understood at the time the treaty was concluded, that the Canal de Haro would be the dividing channel, and that Lord John Russell was aware of this fact. Sir James Pakenham, however, the British negotiator, claimed subsequently that none of these gentlemen had sufficient knowledge of the geography of the region to define the exact line of boundary, and all he and the rest knew about it was that “it was to run through the middle of the channel which separates the continent from Vancouver Island.”²

¹ I give this statement on the sole authority of Barrows's “Oregon,” pp. 301, 302, American Commonwealth Series, but am not in a position to verify it.

² See an essay by Lieutenant-Colonel Coffin in the *Canadian Monthly* for 1876, “How Treaty-Making Unmade Canada,” p. 356. Also a debate in the Royal Colonial Institute, 1872-73, vol. iv., pp. 31-45.

These statements appear to contradict one another, though the weight of testimony is in favor of the contention that the Haro channel was known in 1846. One thing is quite evident, the British ministers made a decided mistake when they did not choose the middle of the great channel at the very outset. At all events, as usual in all negotiations on this continent, the statesmen of the United States, always on the alert for an advantage, won the day. However, with the possession of Vancouver in its entirety, Canada can still be grateful, and San Juan is now only remembered as an episode of diplomacy, which has practically closed the long series of perplexing boundary questions that have arisen since 1783. The United States can be well content with the grand results of their treaties and purchases. They have won in a hundred years or so the former possessions of Spain and France in the Mississippi valley, a large portion of New Brunswick, a tract of four millions of acres to the west of Lake Superior in the settlement of the Northwest boundary—another result of Daniel Webster's astuteness,—and the magnificent region now divided among the States of Oregon, Washington, and Idaho. And we may add another acquisition of theirs—insignificant from the point of view of territorial area, but still illustrative of the methods which have won all the great districts we have named—Rouse's Point, "of which an exact survey would have deprived" the United States, according to Mr. Schouler in his excellent history.¹ The question of the Alaska boundary alone remains unsettled, but it is a mere matter of exact surveying, and Canada will be careful not to lose anything in that region after the experience just mentioned.

During this period the fishery question again assumed considerable importance. The imperial government had supported the provincial governments in their efforts to keep United States fishermen from their fishing grounds under the terms of the convention of 1818. The government at Washington then began to raise the issue that the three miles' limit to which their fishermen could be confined

¹ Schouler "History of the United States," iv., 401.

should follow the sinuosities of the coasts, including bays; the object being to obtain access to the valuable mackerel fisheries of the Bay of Chaleurs and other waters claimed to be exclusively within the territorial jurisdiction of the maritime provinces. The imperial government generally sustained the contention of the provinces—a contention practically supported by American authorities in the case of Delaware, Chesapeake, and other bays on the coasts of the United States—that the three miles' limit should be measured from a line drawn from headland to headland of all bays, harbors, and creeks. In the case of the Bay of Fundy, however, the imperial government allowed a departure from this general principle when it was urged by the Washington government that one of its headlands was in the territory of the United States, and that it was an arm of the sea rather than a bay. The result was that foreign fishing vessels were only shut out from the bays on the coasts of Nova Scotia and New Brunswick within the Bay of Fundy. All these questions were, however, placed in abeyance, for twelve years, by the Reciprocity Treaty of 1854, which opened up the provincial fisheries to the people of the United States, on condition of free trade between the provinces and that country in certain natural products of the mines, fisheries, and farms, of the two peoples. This measure was in itself an acknowledgment of the growing importance of the provinces, and of the large measure of self-government now accorded to them. The treaty only became law with the consent of the provincial legislatures; and, although the Canadian governments were not directly represented by any of their members, the governor-general, Lord Elgin, who personally conducted the negotiations on the part of England at Washington, in this as in all other matters touching colonial interests, was assisted by the advice of his responsible ministers. The treaty lasted until 1866, when it was repealed by the action of the United States in accordance with the provision bringing it to a conclusion after one year's notice from one of the parties interested.

During the twelve years of its existence the United States exported to British North America home products to the value of \$300,808,370, and foreign goods to the value of \$62,379,718, or a total export of \$363,188,088. The imports from the provinces into the United States amounted to \$267,612,131. These figures, therefore, show a balance in favor of the United States of \$95,575,957.¹ This statement, however, does not take into account the value of the provincial fisheries opened up to the fishermen of New England, but it may be estimated from the fact, as stated by Mr. Derby, a recognized authority in the United States on those subjects, that "during the two last years of the Reciprocity Treaty the United States had fishing in the Gulf of St. Lawrence and the Bay of Chaleurs no less than six hundred sail, which must have taken fish to the amount of \$4,500,000," and that "nearly one-fourth of the United States fishing fleet, with a tonnage of 40,000 to 50,000 tons, worth \$5,000,000 to \$7,000,000 annually, fish near the three-miles' limit of the provinces"—"near" being evidently Mr. Derby's euphemism for "within."²

The causes which led to the repeal of a treaty so largely advantageous to the United States have been long well understood. The commercial classes in the Eastern and Western States were on the whole favorable to an enlargement of the treaty, so as to bring in British Columbia and Vancouver Island, now colonies of the Crown, and to include certain other articles the produce of both countries,³ but the real cause of its repeal was the prejudice in the North against the provinces for their supposed sympathy for the Confederate States during the war of the Rebellion. A large body of men in the North believed that the repeal of the treaty would sooner or later force the provinces into annexation, and a bill was actually introduced in the House

¹ See speech of Sir Charles Tupper in Canadian House of Commons, *Can. Hansard*, 1888, vol. i., p. 674.

² See Proceedings of Royal Colonial Institute, 1872-3, pp. 56, 60.

³ See Watkins's "Recollections of Canada and the United States," chap. xviii.

of Representatives providing for the admission of those countries—a mere political straw, it is true, but still showing the current of opinion in some quarters in those days. The raid made by a few rash Confederates who had found refuge in Canada, on the St. Albans Bank, in the State of Vermont, deeply incensed the people of the North, though at no time could it be proved that the Canadian authorities had the least suspicion of the proposed expedition. On the contrary, they brought the culprits to trial, placed companies of volunteers along the frontier, and even paid a large sum of money in acknowledgment of an alleged responsibility when some of the stolen money was returned to the robbers on their release by a Montreal magistrate.¹ When we review the history of those times and consider the difficult position in which Canada was necessarily placed, it is remarkable how honorably her government discharged its duties of a neutral between the belligerents.² It is well, too, to remember how large a number of Canadians fought in the Union armies—twenty against one who served in the South. No doubt the position of Canada was made more difficult at that critical time by the fact that she was a colony of Great Britain, against whom both North and South entertained bitter feelings by the close of the war; the former mainly on account of the escape of Confederate cruisers from English ports, and the latter because she did not receive active support from England. The North had been also much excited by the promptness with which Lord Palmerston had sent troops to Canada when Mason and Slidell were seized on an English packet on the high seas, and the bold tone held by some Canadian papers when it was doubtful if the prisoners would be released. But the Confederate envoys were surrendered, not by a frank admission that Captain Wilkes had violated the sound principles which the United States had always main-

¹ See Dent's "Canada," ii., 446, 447.

² Mr. Secretary Seward wrote on one occasion in a letter to the British representative at Washington: "I think it proper to let you know that the President regards with sincere satisfaction the conduct and proceedings of the Canadian authorities." See *infra*, p. 131.

tained in vindication of neutral rights, but by a mere technical plea that the officer in question had neglected to bring the *Trent* into a prize court, and to submit the whole transaction to judicial examination.¹

Contemporaneously with the repeal of the Reciprocity Treaty came the raids of the Fenians—bands of men who did dishonor to the cause of Ireland, under the pretence of striking a blow at England through Canada, where their countrymen have always found happy homes, free government, and honorable positions. For months before the invasion American newspapers were full of accounts of the assembling and arming of these bands on the frontier of Canada. They invaded the Dominion, property was destroyed, and a number of Canadian youth lost their lives, and O'Neil and his collection of disbanded soldiers and fugitives from justice were forced back to the country whose neutrality they had outraged. The United States authorities, with their usual laxity in such matters, had calmly looked on while all the preparations for the raids were in progress, in the presence of large bodies of militia who could in an hour have prevented these outrages on a friendly territory. Proclamations were at last tardily issued by the government when the damage had been done, and a few raiders were arrested; but the House of Representatives immediately sent a resolution to the President, requesting him "to cause the prosecutions, instituted in the United States courts against the Fenians, to be discontinued if compatible with the public interest"—a request which was complied with. The writer on international law from whom we have already quoted, says that "it would be difficult to find a more typical instance of responsibility assumed by a State through the permission of open acts and of notorious acts, and by way of complicity after the acts."²

¹ Mr. Blaine dissents ("Twenty Years of Congress," vol. I., p. 585) from the ground on which Mr. Seward placed the surrender of the Confederate envoys, and thinks he should have boldly admitted a violation of the right of neutrals.

² Hall, "International Law," p. 215, note. This same writer also refers to the disposition shown by the United States in 1879 to press State responsibility

These raids took place at a critical period of Canadian history—the eve of Confederation. The time had come for enlarging the sphere of the political action of the provinces and giving them larger responsibilities. The repeal of the Reciprocity Treaty and the Fenian invasions helped to stimulate public sentiment in favor of a political union which would enable them to take common measures for their general security and development. In 1867, as the result of the conference of provincial delegates who assembled at Quebec in the autumn of 1865, the imperial parliament passed an act establishing a federal union between the provinces of Canada (now divided into the provinces of Ontario and Quebec), New Brunswick, and Nova Scotia, and providing for the acquisition of the Northwest Territories and the admission of other provinces. This Union was of a federal character—a central government having the control of national or common objects, and provincial governments having control of purely provincial, municipal, and local matters. In 1867-8 the first parliament of United Canada met at Ottawa, and the provincial legislatures at their respective seats of government; and the Dominion of Canada entered on a career of political and industrial development which is now making its influence felt over half a continent.

Before I proceed to review some of the important results of this federal union, it is necessary that I should refer briefly to the relations between the Dominion and the United States for the past twenty-three years. Before and since the union, the government of Canada have time and again made efforts to renew a commercial treaty with the government at Washington. In 1865 and 1866 Canadian delegates were prepared to make large concessions but were unable to come to terms chiefly on the ground, that the imposts which it was proposed by the committee of ways and means to lay upon the products of the British provinces on

to the utmost extreme against Great Britain, when Sitting Bull and some Sioux Indians took refuge in the Northwest Territories of Canada, and there was some reason to expect that they would make incursions into the United States territory. See Wharton, Digest, Sec. 18.

their entry into the markets of the United States were such as, in their opinion, would be, "in some cases, prohibitory, and certainly seriously interfere with the natural course of trade." The delegates were reluctantly brought to the conclusion that "the committee no longer desired trade between the two countries to be carried on upon the principle of reciprocity."¹ The result of these negotiations was to convince the people of Canada that, while they should be always ready to listen to any fair proposition from the United States in the direction of reciprocity, they should at the same time seek to open up as many new avenues of trade as possible and not depend on the caprice of their neighbors. In 1869 Sir John Rose made an effort in the same direction, but was met by the obstinate refusal of the Republican party, then as always highly protective. President Grant during that year, in a message to Congress, formulated the policy of his party by the emphatic statement that "the question of renewing a treaty for reciprocity of trade between the United States and the British Provinces on this continent, has not been favorably considered by the administration." The advantages of a treaty "would be wholly in favor of the British Provinces, except possibly a few engaged in the trade between the two sections."

All this while the fishery question was assuming year by year a form that was most irritating to the two countries. The headland controversy was the principal difficulty, and the English government, in order to conciliate the United States at a time when the Alabama question was a subject of anxiety, induced the Canadian government to agree, very reluctantly it must be admitted, to shut out foreign fishing vessels only from bays less than six miles in width at their entrances. In this, as in all other matters, however, the Canadian authorities acknowledged their duty to yield to considerations of imperial interests, and acceded to the wishes of the imperial government in almost every respect except to actually surrender their territorial rights in the fisheries. They issued licenses to fish, at low rates, for several

¹ See Gray, "Confederation," pp. 294-304. Also Watkins, pp. 412, 413.

years, only to find eventually that the American fishermen did not think it worth while buying these permits when they saw that the regulations for protecting the fisheries could be evaded with little difficulty. The result of the correspondence that went on for several years was the Washington Conference or Commission of 1871 which, in its inception, was intended to settle the fishery question primarily, but which actually gave the precedence to the Alabama difficulty—then of most concern in the opinion of the London and Washington governments.¹ With the settlement of the Alabama question, and the three new rules laid down at the outset as the basis of arbitration, we have nothing to do in this review, and can only say that Canadians as well as Englishmen might well be satisfied that a troublesome international difficulty was at last amicably arranged. The representatives of the United States would not consider a proposition for a renewal of another Reciprocity Treaty on the basis of that of 1854. The questions arising out of the convention of 1818 were not settled by the commission, but were practically laid aside for ten years by an arrangement providing for the free admission of salt-water fish into the United States, on condition of allowing the fishing vessels of that country free access to the Canadian fisheries. The free navigation of the St. Lawrence was conceded to the United States in return for the free use of Lake Michigan and of certain rivers in Alaska. The question of the coasting trade, long demanded by the maritime provinces, was not considered, and while the canals of Canada were opened up to our neighbors on the most liberal terms, the Washington government contented themselves with a barren promise in the treaty to use their influence with the authorities of the States to open up their artificial waterways to Canadians. The Fenian claims were abruptly laid aside, although had the same principle of "due diligence" that was laid down in the new rules been applied to this question, the government of the United States would have been mulcted in heavy damages.

¹ See Proceedings of Royal Colonial Institute, 1872-73, pp. 7-30.

This question above all others should have been settled on terms which would have shown the disposition of a great country to do justice to a neighbor who had, under the most trying circumstances, kept a due check upon her sympathies, so that even Mr. Caleb Cushing¹ was unable to detect a flaw in her conduct. In this, however, as in many other negotiations with the United States, Canada felt she must make sacrifices for the empire, whose government wished all causes of irritation between England and the United States removed as far as possible by the treaty. One important feature of this commission was the presence, for the first time in the history of treaties, of a Canadian statesman. The astute premier of the Dominion, Sir John Macdonald, was chosen as one of the English High Commissioners, avowedly with the object of acknowledging the interest of Canada in the questions involved. Although he was but one of five English commissioners, and necessarily tied down by the instructions of the imperial state, no doubt his knowledge of Canadian questions was of great service to Canada during the conference. If the treaty finally proved more favorable to the Dominion than it at first appeared to be, it was owing largely to the clause which provided for a reference to a commission of the question, whether the United States would not have to pay the Canadians a sum of money, as the value of her fisheries over and above any concessions made her in the treaty. The result of this commission was a payment of five millions and a half of dollars to Canada and Newfoundland, to the infinite disappointment of the politicians of the United States who had been long accustomed to have the best in all bargains with their neighbors. No fact shows more clearly the measure of the local self-government at last won by Canada, and the importance of her position in the empire, than the fact that the English government recognized the right of the Dominion government to name the commissioner who represented Canada on an arbitration

¹ He was one of the counsel, in 1872, for the United States, at the Geneva Conference, for the settlement of the Alabama claims.

which decided a question of such deep importance to her interests. We see, then, as Canada gained political strength, she obtained an influence¹ in imperial councils which Mr. Fish resented at the time, and was able to obtain that consideration for her interests, which was entirely absent in the days of her infancy and weakness.

The clauses in the Washington treaty relating to the fisheries, and to trade with Canada, remained in force for twelve years, and were then repealed by the action of the United States government.² During its existence the Canadian ministry sent to Washington one of the ablest public men of the Dominion—a man especially versed in matters of trade and finance—with the object of arranging, if possible, a measure of reciprocity with the United States. Mr. George Brown was quite ready, presumably with the assent of his government, not only to revive the old reciprocity treaty, but to extend its terms largely, so as to admit various other articles free of duty into Canada; but the proposed arrangement never passed the Senate of the United States. With the expiry of the treaty of 1871, on the first of July, 1885, the relations between Canada and the United States again assumed a phase of great uncertainty. President Cleveland showed every disposition, until near the close of his administration, to come to some satisfactory adjustment of the question at issue, and suggested in one of his messages that it was “in the interests of good neighborhood and commerce” that a commission should be “charged with the consideration and settlement upon a just, equitable, and honorable basis, of the entire question of the fishing rights of

¹ See Blaine, “Twenty Years of Congress,” vol. ii., p. 627.

² Article 29, allowing goods to pass in bond through the two countries, was not repealed in express terms when the fishery articles were terminated, but has been allowed to remain in force ever since. President Cleveland was among those who maintained the opinion that it was actually abrogated, and in a message to Congress, in 1888, he recommended “immediate legislative action, conferring upon the executive the power to suspend by proclamation the operation of all laws and regulations permitting the transit of goods in bond, across or over the territory of the United States to or from Canada.” Happily for all the interests involved, the bonding system still remains in force.

the two countries." Canada, from 1885, adhered to the letter of the convention of 1818, and allowed no fishing vessels to fish within the three miles' limit, to transmit cargoes of fish in their ports, or to enter them for any purpose, except for shelter, wood, water, and repairs. For the infraction of the treaty several vessels were seized, and more than one of them condemned. A clamor was raised in the United States on the ground that the Canadians were wanting in that spirit of friendly intercourse which should characterize the relations of neighboring peoples. The fact is, the Canadians were bound to adhere to their legal rights,—rights which had been always maintained before 1854; which had remained in abeyance between 1854 and 1866; which naturally revived after the repeal of the reciprocity treaty of 1854; which again remained in abeyance between 1871 and 1885; and were revived when the United States themselves chose to go back to the terms of the convention of 1818. The Canadian people had time and again shown every disposition to yield a large portion of their just rights—first by the treaty of 1854, and secondly by the treaty of 1871—in return for a substantial commercial arrangement and a due acknowledgment of the value of their fisheries; but they were not prepared to see their territorial waters recklessly and unlawfully invaded by a class of men who, since 1783, seemed to consider they had a perfect claim to the Canadian fishing-grounds. If there was a system of government in the United States, such as exists in England and Canada, requiring unity of action between the legislative and executive authorities, perhaps we would not have to record such unsatisfactory results as followed President Cleveland's efforts to adjust satisfactorily the relations of his country with Canada. Congress passed a measure before the presidential election of 1888, which, had it ever been carried out by the President, meant non-intercourse with the Dominion,—a measure which may have resulted in consequences to both countries I do not like to consider for a moment. It would be well to remind the politicians in Congress that such measures are often like the Australian

boomerang, and that the experience of the non-intercourse acts that preceded the war of 1812 can hardly sanction a repetition of such a policy in these later times.¹ The repeal of the bonding system and interference with the transportation facilities of Canadian railways could hardly benefit the commerce of the United States, whatever might be the effect of such an unwise policy on Canada itself.

Both President Cleveland and Mr. Secretary Bayard, in a statesmanlike spirit, obtained the consent of England to a special commission to consider the fishery question. Sir Sackville West, Mr. Joseph Chamberlain, and Sir Charles Tupper represented England; Mr. Bayard, then Secretary of State, Mr. Putnam, of Maine, and Mr. Angell, of Michigan University, represented the United States. Sir Charles Tupper, the present High Commissioner of Canada in London, is one of the ablest statesmen of the Dominion, and as a Nova Scotian was specially qualified to guard Canadian interests. At the opening of the commission, he attempted to obtain a basis of action on the general proposition which he submitted that "with the view of removing all causes of difference in connection with the fisheries, the fishermen of both countries shall have all the privileges enjoyed during the existence of the fishery clauses of the Washington Treaty of 1871, in consideration of a mutual arrangement providing for freedom of commercial intercourse between the United States and Canada." The United States commissioners refused to consider this proposition, on the ground "that such a measure of commercial intercourse would necessitate an adjustment of the present tariff of the United States by congressional action; which adjustment the American plenipotentiaries consider to be manifestly impracticable of accomplishment through

¹ "The restrictive system, as a mode of resistance," said Calhoun in a remarkable speech, which evokes the commendation of Henry Adams in his admirable "History" (vi., 233), "and a means of obtaining a redress of our wrongs, has never been a favorite one with me. . . . I object to the restrictive system, and for the following reasons: because it does not suit the genius of our people or that of our government or the geographical character of our country."

the medium of a treaty under the circumstances now existing." However, the commissioners agreed unanimously to a treaty, which was essentially a compromise, as indeed all such treaties must be in the nature of things. Foreign fishermen were to be at liberty to go into any waters where the bay was more than ten miles wide at the mouth, but certain bays, including Bay Chaleurs, were expressly excepted in the interest of Canada from the operation of this provision. The United States did not attempt to acquire a right to fish in the inshore fishing-grounds of Canada—that is, within three miles of the coasts,—but these fisheries were to be left for the exclusive use of the Canadian fishermen. More satisfactory arrangements were made for vessels obliged to resort to Canadian ports in distress, and a provision was made for allowing American fishing vessels to obtain supplies and other privileges in the harbors of the Dominion whenever Congress allowed the fish of that country to enter free into the market of the United States. President Cleveland in his message submitted the treaty to the Senate, acknowledged that it "supplied a satisfactory, practical, and final adjustment, upon a basis honorable and just to both parties, of the difficult and vexed question to which it relates." The Republican party, however, at that important juncture—just before a presidential election—had a majority in the Senate, and the result was the failure in that body of a measure which, although by no means too favorable to Canadian interests, was framed in a spirit of judicious statesmanship, and, if agreed to, would have settled for all time, in all probability, questions which have too long been sources of irritation to the two countries.¹

While these events were transpiring, the Dominion of Canada was extending its limits across the continent, developing a great railway system, and making steady strides in the path of national progress. That vast region which

¹ For a clear, statesmanlike statement of the conditions under which the proposed treaty was negotiated, and of its principal features, see the speech of Sir Charles Tupper, one of the Commissioners, in the *Canadian Hansard*, 1888, vol. i.

extends from the head of Lake Superior to the Rocky Mountains, and from the Lake of the Woods and the 49° of north latitude to Hudson Bay and the Arctic Ocean, the home of the Indian and the fur-trader for two centuries, whose capabilities for settlement had been studiously concealed from the world by a great fur monopoly, was added to the territory of the Dominion, and the new province of Manitoba was established with a complete system of local government. Prince Edward Island, a rich spot in the Gulf of St. Lawrence, came into the Union, and the Dominion was extended as far as the Pacific Ocean by the admission of British Columbia. Two noble islands, with great fisheries and coal mines, Cape Breton and Vancouver, now guarded the Atlantic and Pacific shores of the Dominion. A great line of railway spanned the continent from the Strait of Canso to the Gulf of Georgia, as a result of the new energy and national spirit developed by the union. Population flowed slowly, yet steadily into the territories, and there is now a cordon of cities, towns, and villages stretching from Port Arthur at the head of Lake Superior to Vancouver, that city of rapid growth on the Pacific Coast. The great tide of European emigration, it is true, has continued to flow into the United States, and it is not to be expected that it can be diverted in a day into that great western country of Canada which offers such superior facilities for the cultivation of wheat and other cereals, and for the raising of all classes of stock. In the nature of things, as the wheat lands of the United States become exhausted—and that time is probably not very far off,—the Territories of Canada must attract the surplus population of Europe, and even large numbers of people from the States themselves, where a reckless system of agriculture has been gradually impoverishing the land.

As a sequence of the acquisition of British Columbia Canada has been compelled to take an active part in the consideration of a question of some gravity that has arisen between England and the United States, in consequence of a cruiser of the latter country having forcibly seized and carried into

a port of Alaska certain Canadian vessels engaged in the seal fisheries of the great body of sea known in these times as Behring Sea. A perusal of the blue book containing the correspondence on the subject between London, Ottawa, and Washington, shows that from the beginning to the end of this controversy the imperial government has consulted with the government of Canada on every point material to the issue. As an English statesman, determined to maintain the interests of all sections of the empire, Lord Salisbury has paid every respect to the opinions and statements of the Canadian ministry in relation to a matter which deeply affects Canada, and has pursued a course throughout the negotiations which has done much to strengthen the relations between the parent state and the dependency. Without going fully into this vexed question, I shall simply state the principal arguments advanced by the English and Canadian authorities in maintaining their case,—arguments which are irrefutable, because based on substantial facts, and on well understood principles of the law of nations.

1. That certain Canadian schooners, fitted out in British Columbia, and peaceably and lawfully engaged in the capture of seals in the Northern Pacific Ocean, adjacent to Vancouver Island, Queen Charlotte Islands, and Alaska,—a portion of the territory of the United States acquired in 1867 from Russia—were seized in the open sea, out of sight of land, by a United States cutter, although being at the time at a distance of more than sixty miles from the nearest land. These vessels were taken into a port of Alaska, where they were subjected to forfeiture, and the masters and mates fined and imprisoned.

2. That the facts of these seizures showed the English and Canadian governments that the authorities of the United States appeared to lay claim to the sole sovereignty of that part of Behring Sea lying east of the westerly boundary of Alaska, as defined in the first article of the treaty between the United States and Russia in 1867 by which Alaska was ceded to the United States, and which includes a stretch of

sea extending in its widest part some 600 or 700 miles easterly from the mainland of Alaska.

3. That these proceedings were in direct violation of established principles of the law of nations, as urged in former times by the United States.

4. That the United States, through their Secretary of State, Hon. John Quincy Adams, emphatically resisted in 1822 a claim made by a Russian ukase, to sovereignty for one hundred miles distant from the coast and islands belonging to Russia in the Pacific Ocean, north of the fifty-first degree of latitude. That Mr. Adams deemed it a sufficient answer to this claim to point out the fact that "the distance from shore to shore on that sea in latitude 51° north latitude is not less than 90° of longitude, or 4,000 miles." That Russia subsequently relinquished her indefensible position and agreed to a convention first with the United States, and subsequently with England, recognizing the rights of navigation and fishing by those nations in any part of the Behring Sea within the limits allowed by the law of nations.

5. That the claim that Behring Sea is "a landlocked sea," with a firm line of pelagic boundary, is manifestly absurd from the fact that it is about nine hundred miles from the Aleutian Islands to the Asiatic coast of Russia. That even in the case of the Sea of Okhotsk on which such a contention might be raised with a semblance of reason the government of the United States as late as 1867 remonstrated with the Russian government in consequence of a report being made to them that American vessels had been interfered with whilst engaged in their lawful operations in that body of water—a report which was subsequently shown to be without foundation since the Russian government had not taken any restrictive measures with regard to the waters in question. That the United States, as already shown in this paper, took similar ground in the case of the Bay of Fundy, although it cannot come within the category of an open sea.

6. That the municipal legislation of the United States under which the Canadian vessels were seized and condemned and their masters and mates fined and imprisoned,

in an Alaskan court, could have no operation whatever against vessels in the Behring Sea, which is not in the territorial waters of United States; that any claim to exclusive jurisdiction on such seas is opposed to international law, and no such right can be acquired by prescription.

7. That the Canadian vessels captured in the Behring Sea were not engaged in any proceeding *contra bonos mores*, as urged by Mr. Blaine, inasmuch as such a rule is only admissible in the case of piracy or in pursuance of a special international agreement. All jurists of note have acknowledged this principle, and President Tyler, in a message to Congress in 1843, pressed the point that with the single exception of "piracy" no nation has in the time of peace any authority to detain the ships of another upon the high seas on any pretext whatever outside of territorial jurisdiction." That discreditable traffic, the slave-trade, might well be considered *contra bonos mores*, but the government of the United States would not consent to any English ship visiting and searching a suspected ship floating their flag, and yet the capture of seals is now a more serious affair than human slavery in the estimation of the Washington Secretary of State.

8. That the English and the Canadian governments—who are one in this matter—are quite ready to concede to the United States, as asked for, "the same rights and privileges on the lands and waters of Alaska which were always conceded by all friendly nations to the Empire of Russia," inasmuch as the British government have, whenever occasion arose, opposed all claims to exclusive privileges in the non-territorial waters of Behring Sea, in strict accord with the views which, previous to the present controversy, were consistently and successfully maintained by the United States."

9. That the British government have always claimed the freedom of navigation and fishing in the waters of Behring Sea outside of the usual territorial marine league from the coast; that it is clearly impossible to admit that, "a public right to fish or pursue any other lawful occupation on the

high seas can be considered to be abandoned by a nation from the mere fact that for a certain number of years it has not suited the subjects of that nation to exercise it"; and it must be remembered that British Columbia has come into existence as a colony, and her sealing industry has become important only within a very recent period.

10. That the Canadian government in their desire to maintain as friendly relations as possible with the United States have stated to the imperial government their readiness to consider any international arrangement for the proper preservation of the seal, but before such an inquiry is agreed to they expect that the question raised by the seizures of the Canadian vessels, shall be settled according to the law of nations, and that the claim of indemnity now in the hands of Her Majesty's government shall be fully settled.

11. That Her Majesty's government are quite ready to agree that the whole question of the legality of the seizures in the Behring Sea and the issues dependent thereon shall be referred to an impartial arbitration.¹

From this summary it will be seen that the issues raised by the English and Canadian governments are very clear—that the seizures of Canadian vessels were illegal—that the United States have no special or exclusive rights in the open sea under any recognized principle of international law. The whole tenor of Mr. Blaine's later despatches has been in the direction of the indefensible ground that Behring Sea and its fisheries occupy an altogether exceptional position among the seas and fisheries of the world, but no authority of note, American or European, has supported his argument, and it is impossible to explain how the Secretary of State could raise the issue of an offence against good morals when it can have no application to the fisheries in question, and could in any case have no value or force except by international agreement—an agreement which would only bind the parties who might make it.

¹ See "Correspondence Respecting the Behring Sea Fisheries, 1886-90." Presented to Parliament, August, 1890.

If the United States have any exclusive rights beyond those based on intelligible and generally admitted principles of reason and the law of nations, let them be explained and settled in a court of arbitration; and if there is any necessity for a close season let it be decided by experts in such matters. The question in itself chiefly involves the profits of a commercial monopoly, and were it not for the extraordinary pretensions urged by the United States government—pretensions which they would have been the first to disavow—indeed were the first to repudiate in the past, and which no nation could under any circumstances maintain for a moment in the face of the world, no difficulty whatever could have occurred in a matter which should have been long ere this settled at once by common agreement.¹

The part that Canada has taken in this matter is in itself an illustration of her importance in imperial councils and of the vastness of her territorial domain, which now stretches from the Atlantic to the Pacific. One hundred and thirty years ago the term "Canada" represented an ill-defined region of country, watered by the St. Lawrence and the great Lakes, inhabited by a few thousand Frenchmen, living chiefly on the banks of the St. Lawrence, and its tributaries. English-speaking people then came into the country, and settled in the maritime provinces, on the St. Lawrence, and

¹ Since this paper was presented to the American Association the English and Canadian governments have given additional evidence of their desire to settle this vexed question with as little delay as possible by taking the necessary steps through the Canadian Attorney-General for bringing the whole question of the legality of the seizures of Canadian vessels on the high sea before the Supreme Court, the highest tribunal in the United States. After argument the Supreme Court decided to grant the petition of counsel representing the British government for leave to file an application for a writ of prohibition to prevent the District Court of Alaska from carrying out its decree of forfeiture in the case of the schooner *Sayward*, labelled for unlawfully taking seals within the waters of Behring Sea. The next question that arises is, whether the court will decide that the writ of prohibition should issue; and this will be argued in October. It is to be hoped that the court will be able to decide the whole matter on its legal merits. If so, it will be a decided triumph of law over diplomacy, with all its devious ways.

on the Lakes; representative institutions were established, commerce was developed, and, by 1790, five provinces, governed in the English way, were established from Cape Breton to the western limits of Ontario. For many years the indifference of English statesmen and the ignorance which until relatively recent times prevailed with respect to the value of Canada as a home for an industrious people, retarded her material and political development. Isolated provinces, without common aspirations or national aims, had no influence over imperial councils in matters which were arranged by English diplomatists, whilst the federal republic, a union of free, self-governing States, had always in view, the promotion of their national strength and territorial aggrandizement. England, Spain, France, Mexico, and Russia, in turn, contributed their share to her ambition, and more than once, when discontent reigned, and hope was absent, the ability of Canada to hold her own on this continent, in the opinion of not a few, seemed to be steadily on the decline. But self-government in all matters of local concern changed the gloomy outlook to one of brightness and hope, and a spirit of self-reliance developed itself among statesmen and people until Confederation united all the provinces in a union, which alone could enable them to resist the ambition of their restless neighbor. Forty-four States in 1890, with a population of over 62,000,000 of souls, against a population of 4,000,000 in 1790, with a total commerce of exports and imports to the value of \$1,400,000,000, against \$43,000,000 in 1790, with a national revenue of more than \$300,000,000 against \$41,000,000 in 1790, now represent the federal union, once composed of thirteen States, the basis of the nation's greatness. Despite all the powerful influences that have fought against Canada, she has held her own in America. In 1890 a population of 5,000,000, against 1,000,000 in 1840, with a total trade of \$230,000,000, against \$25,000,000 in 1840, and with a national revenue of nearly \$40,000,000 against \$700,000 in 1840, inhabit a Dominion of seven regularly organized provinces, and of an immense territory, now in course of development, stretching from

Manitoba and Ontario to the foothills of the Rocky Mountains, and northerly to a great region watered by the Peace, Athabasca, Slave, and Mackenzie rivers, and possessing a climate and soil, according to recent explorations, capable of supporting millions. This Dominion embraces an area of 3,519,000 square miles, including its water surface, or very little less than the area of the United States, with Alaska, or a region with a width of 3,500 miles from east to west, and 1,400 miles from north to south. The magnificent valley through which the St. Lawrence flows from the Lakes to the ocean, is now the home of prosperous, energetic, and intelligent communities, one of which was founded nearly three centuries ago. A remarkable system of water-ways, consisting mainly of the Red, Assiniboine, and Saskatchewan rivers, extends through the plains of the territories as far as the base of the Rockies, and fertilizes a region whose capabilities for the production of foods is probably not surpassed on this continent. The mountainous country to the north of Lake Superior is rich with copper, nickel, and other valuable minerals, which are already attracting the attention of enterprise in Europe and America. The gold mines of British Columbia are still productive, and the wealth that lies buried in the rocks of that immense province is yet to be discovered. The coal mines of Vancouver have no rivals on the Pacific coast, while those of Nova Scotia, and the Territories are capable of infinite development. The fisheries have long been the envy of the United States, and the agricultural production is as great as that of the most favored sections of that country. Its climate and resources are those of the Northern, Middle, and Western States,—the best sources of a nation's energy and wealth. No dangerous question like slavery exists to complicate the political and social conditions of the union, and although there is a large and increasing French Canadian element in the Dominion—the heritage of the old French *régime* in America,—its history so far should not create fear as to the future, except in the minds of sectarian and sectional pessimists, who are too often raising gloomy phantoms of their own imaginings.

Whilst this element naturally clings to its national language, and special institutions, yet it has, under the influence of a complete system of local self-government, taken as active and earnest a part as the English element in establishing and strengthening the confederation. The expansion of the African race in the Southern States is a question of the future for the federal republic, which its statesmen will find much more difficult than any that Canadian statesmen have to solve on account of the existence of a French nationality, who possess the lively intelligence of their race, exercise all the privileges of self-government, and, above all things, well comprehend that their true interests lie in a prosperous Canadian confederation, and not in union with a country where they would eventually lose their national identity.

The whole history of Canada, indeed, proves that there has been always among the people, not merely an attachment to England and her institutions, but a latent influence which, in times of peace as in times of peril, has led them onward in a path of national development which every decade of years has diverged more and more from the federation of States to their south. The statesmen and people generally of that country have been always remarkably ignorant not only of the history, of the political institutions, and of the political sentiments of the Canadians, and have never appreciated the tendency of this political development which is in the direction of a new nationality, not inferior to the United States in many elements of a people's greatness. Democracy as a form of government has, in Canada as in other parts of the world where representative institutions exist, made its influence felt in the enlargement of political rights and in the extension of the franchise, and sometimes unhappily in Canada as in the neighboring country, partly obscures and misleads public opinion in moments of bitter political controversy. Happily the principles on which Canadian government is based are sound, and political morality is yet on the whole higher than in the neighboring country. The federal Union gives expansion to the national energies of the whole dominion, and at the same time should

afford every security to the local interests of each member of the federal compact. In all matters of Dominion concern, Canada is a free agent. While the Queen is still at the head of the executive authority, and can alone initiate treaties with foreign nations—that being an act of complete sovereignty—and appeals are still open to her privy council from Canadian courts within certain limitation, it is an admitted principle that so far as Canada has been granted legislative rights and privileges by the imperial parliament—rights and privileges set forth explicitly in the British North America Act of 1867—she is practically sovereign in the exercise of all those powers as long as they do not conflict with the treaty obligations of the parent state or with imperial legislation directly applicable to her with her own consent. It is true the Queen in council can veto acts of the Canadian parliament, but that supreme power is only exercised under the conditions just stated, and can no more be constitutionally used in the case of ordinary Canadian statutes affecting the Dominion solely, than can the sovereign to-morrow veto the acts of the imperial parliament—a prerogative of the crown still existent but not exercised in England since the days of Queen Anne, and now inconsistent with modern rules of parliamentary government. England exercises a certain supervision over the affairs of the Dominion through a governor-general, who communicates directly with an imperial secretary of state, but the English government in every matter directly affecting Canada acts,—as for instance in the negotiations respecting the fisheries and Behring Sea,—in unison with the Canadian ministry whose statements are carefully considered since they represent the sentiments and interests of the Canadian people who, as subjects of the empire, are entitled to as much weight as if they lived in the British Isle. In a limited sense there is already a loose system of federation between England and her dependencies. The central government of England, as the guardian of the welfare of the whole empire, co-operates with the several governments of her colonial dependencies, and by common

consultation and arrangement endeavors to come to such a determination as will be to the advantage of all the interests at stake. In other words, the conditions of the relations between England and Canada are such as to ensure unity of policy as long as each government considers the interests of England and the dependency as identical, and keeps ever in view the obligations, welfare, and unity of the Empire at large. Full consultation in all negotiations affecting Canada, representation in every arbitration and commission that may be the result of such negotiations, are the principles which have been admitted by England of late years in acknowledgment of the development of Canada and of her present position in the empire, and any departure now from so sound a doctrine would be a serious injury to the imperial connection and an insult to the ability of Canadians to take a part in the great councils of the world.

Canada then is no longer a mere Province, in the old colonial sense of the term, but a Dominion possessing many of the attributes of a self-governing nation. Her past history is not that of a selfish people, but of one ever ready to make concessions for the sake of maintaining the most friendly relations between England and the United States. Every treaty that has been made with the United States has been more or less at the expense of some Canadian interest, but Canadians have yielded to the force of circumstances, and to reasons of national comity and good neighborhood. Canada has been always ready to agree to any fair measure of reciprocal trade with her neighbors, but this paper has shown that all her efforts in that direction have been fruitless for years.¹ One thing is certain, and that is, the Canadian people, since 1866, have been taught the great lesson of self-reliance, and the necessity of developing all those

¹ It is proper to state here that, in addition to the several efforts for a renewal of reciprocity that have been mentioned in this paper, the Government of Canada in 1879 placed on the statute book what has been called "a standing offer" that certain American products should be proclaimed free of duty in Canada whenever similar Canadian products were allowed to enter free into the United States. But this enactment practically proved a nullity.— "See Revised Statutes of Canada," c. 33, sec. 9.

qualities which are essential to the unity and security of their Dominion.¹ Conscious of the success that must be the reward of courage and energy, Canada enters upon the future with confidence and tranquillity, and asks nothing from her great competitor except that consideration, justice, and sympathy which are due to a people whose work on this continent has just begun, and whose achievements may yet be as remarkable as those of the great federation to their south. The same mysterious Providence that has already divided the continent of America as far as the Rio Grande between Canada and the United States, and has in the past prevented their political fortunes becoming one, still forces the Canadian communities with an irresistible power to press onward until they realize those high conceptions which their statesmen and people already imagine for them in a not distant future; but whilst the stream of Canadian development refuses to turn aside from its natural channel and swell the current that is ever carrying forward the federal republic to so high a position among the nations, Canadians on this eve of another year, with its new hopes and aspirations, wish God-speed to their neighbors in their unparalleled career and trust, as the months pass by, that the clouds which hang over the two countries may disappear, and a bright prospect of continuous friendship may open before them both—

“— As the varying tints unite
And form in heaven's light
One arch of Peace.”

¹ The present governor-general of Canada, Lord Stanley, of Preston, speaking from the high standpoint of an English statesman anxious for the welfare of Canada, has of late seized every opportunity that has offered itself of pressing upon Canadians the necessity of cultivating this spirit of self-reliance and of facing all the difficulties of the present and future “in a manly and hopeful spirit.” Sympathetic speeches of this character keep alive an English feeling and maintain the unity of the empire.

