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AMERICAN

DIPLOMATIC QUESTION

BY

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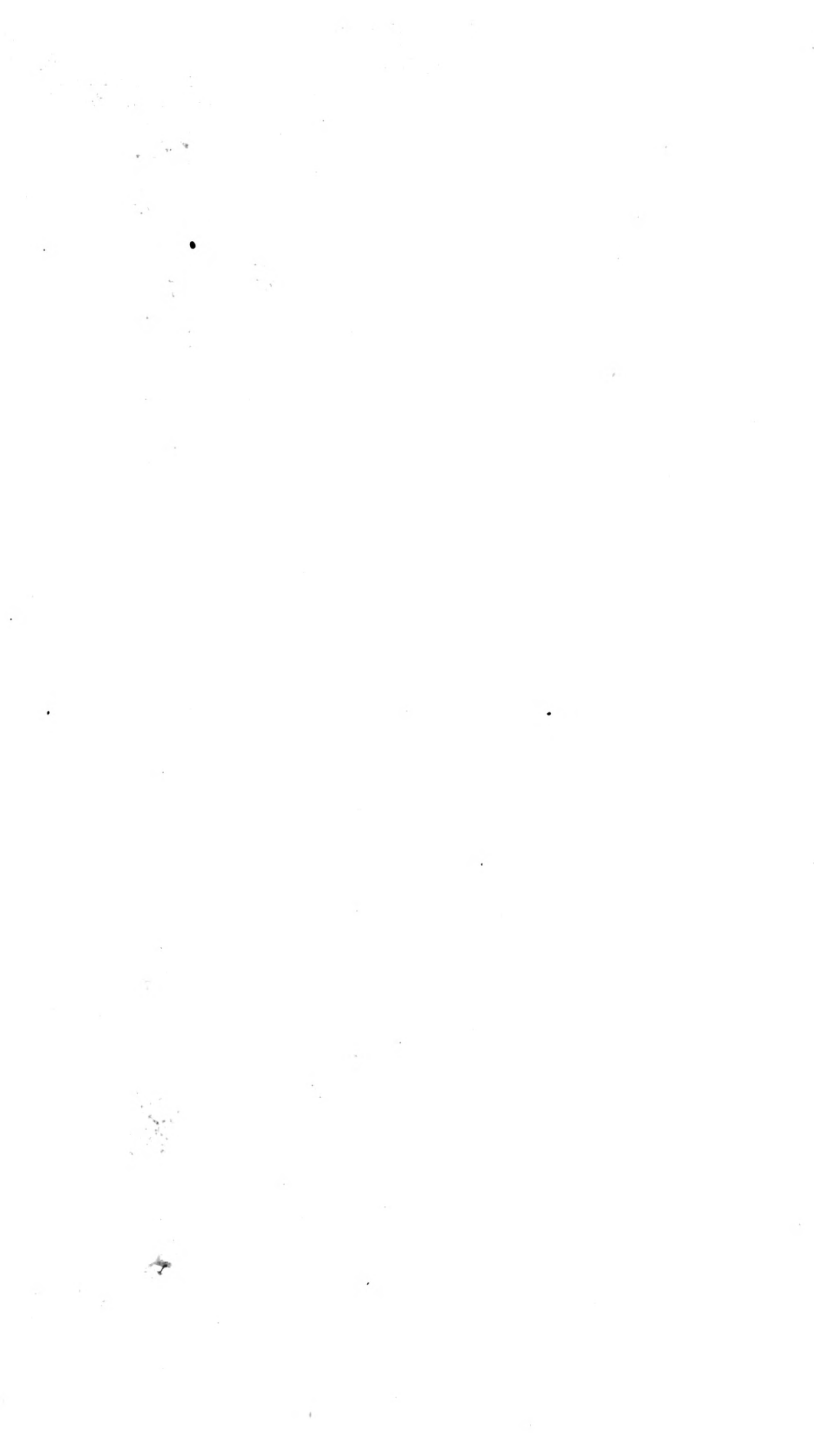
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I

THE FUR-SEALS AND THE BERING
SEA AWARD



I

THE FUR-SEALS AND THE BERING SEA AWARD

BY treaty of March 30, 1867, in consideration of the sum of \$7,200,000, Russia ceded to the United States all her possessions in North America. These included the present territory of Alaska, the Aleutian chain, and some isolated groups of islands in the Bering Sea. The western boundary of the territory so transferred to the United States was described in the first article of the treaty as follows: —

The western limit within which the territories and dominion conveyed, are contained, passes through a point in Bering's Straits on the parallel of sixty-five degrees thirty minutes north latitude, at its intersection by the meridian which passes midway between the islands of Krusenstern, or Ignalook, and the island of Ratmanoff, or Noonarbook, and proceeds due north, without limitation, into the same Frozen Ocean. The same western limit, beginning at the same initial point, proceeds thence in a course nearly southwest, through Behring's Straits and Behring's Sea, so as to pass midway between the northwest point of the island of St. Lawrence and the southeast point of Cape Choukotski, to the meridian of one hundred and seventy-two west longitude; thence, from the intersection of that meridian, in a southwesterly direction, so as to pass midway between the island of Attou and the Copper island of the Komondorski couplet or group, in the North Pacific Ocean, to the meridian of one hundred and ninety-three degrees west longitude, so as to include in the territory conveyed the whole of the Aleutian Islands east of that meridian.

An unusual example was here presented of a divisional line between two empires passing almost midway through a great ocean. The boundary in question marks the *western*

limit within which the territories and dominion conveyed are contained. This terse description may be regarded as a shorter and more convenient mode of expression than the separate enumeration of a bewildering number of islands, yet it involved a confusing implication—that Russia intended by these words to convey to the United States, not only all the islands lying east of the imaginary line so designated, but, indeed, the actual sea itself, with full and exclusive dominion over the same. This construction of the intent and purpose of this clause of the treaty, however novel or in ill accord with the usages of nations, gained apparent weight from the fact that through a period of many years Russia had persistently claimed extraordinary rights of navigation and fisheries in Bering Sea,—rights which even at that time were regarded by civilized nations as beyond the sanction of international law. The important question—had Russia, by her assertions, gained a valid title to the waters of Bering Sea, and then, had the United States really acquired by purchase a dominion over this extensive body of water, or even greater privileges of navigation therein than are enjoyed in common by all nations?—formed one of the issues in the Bering Sea arbitration trial, held in Paris, in the spring and summer of 1893.

As early as the year 1800, Russia had established in Alaska a chartered company, with exclusive rights of hunting and fishing in its waters and of trading with its native population. In order better to protect the interests of this flourishing business organization, the Emperor Alexander the First, in 1821, issued an ukase, or proclamation, in the following words:—

SECTION I. The transaction of commerce, and the pursuit of whaling and fishing, or any other industry on the islands, in the harbors and inlets, and, in general, all along the northwestern coast of America from Behring Strait to the fifty-first parallel of northern latitude, and likewise on the Aleutian Islands and along the eastern coast of Siberia, and on the Kurile Islands; that is, from Behring Strait to the southern promontory of the Island of Urup, viz., as far south as latitude forty-five degrees and fifty

minutes north, are exclusively reserved to subjects of the Russian Empire.

SECTION II. Accordingly, no foreign vessel shall be allowed either to put to shore at any of the coasts and islands under Russian dominion as specified in the preceding section, or even to approach the same to within a distance of less than one hundred Italian miles. Any vessel contravening this provision shall be subject to confiscation with her whole cargo.

At the time of the promulgation of this law (1821), the principle of absolute freedom of navigation in the open sea was generally recognized, and no nation could rightfully assert her sovereignty over the ocean further than three marine leagues from her own shores. This distance was considered the average range of a cannon shot, and, therefore, the limit within which a people could protect their marine jurisdiction from the land. Seven years before that time the American commissioners at Ghent had made the attitude of the United States Government in this matter quite clear by their determined opposition to England's threatened assertion of jurisdiction over the Newfoundland banks. Alexander the First either considered himself superior to the operation of international law, or he may have regarded the entire Bering Sea as a closed sea, or *mare clausum*, over which he could properly exercise sole control, even to the total exclusion of all foreign vessels. The fact that in 1821 the waters of the Bering Sea washed only Russian shores, which, in some respects, suggested a closed sea, probably led the Emperor Alexander to regard his assertions of enlarged dominion over the whole or any part of it as not only just and right, but fully in keeping with the principles of international law. Bering Sea is in reality a vast ocean, communicating with the larger Pacific Ocean through many channels of great width. It is, indeed, a part of the greater ocean, and should properly be so considered, being separated from it only by a line of islands that often lie many miles apart.

The violation of legal principles concerning the extent of marine jurisdiction, made by the Russian Emperor's ukase of

1821, might have gone unchallenged by the world for many years; for, in those early times, very few merchant vessels had occasion to visit those distant waters, and in general little interest attached to their inhospitable shores; nevertheless, fleets of American whalers had even before that time found their way north of the Aleutian Islands, following the custom of making annual summer cruises thereabouts in pursuit of whales, which were abundant in the cold waters of the Bering Sea. The Russian restrictions upon navigation in the northern Pacific Ocean seriously embarrassed those hardy sea-rovers from New Bedford and Nantucket. Through their complaints to the State Department in Washington, an American protest appeared against these Russian assertions of sovereignty over so large an expanse of ocean. Secretary of State John Quincy Adams, in a communication of February 25, 1822, to Mr. Poletica, then Russian Minister at Washington, said: —

I am directed by the President of the United States to inform you that he has seen with surprise, in this edict, the assertion of a territorial claim on the part of Russia, extending to the fifty-first degree of north latitude on this continent, and a regulation interdicting to all commercial vessels other than Russian, upon the penalty of seizure and confiscation, the approach upon the high seas within one hundred Italian miles of the shores to which that claim is made to apply. . . . It was expected before any act which should define the boundaries between the United States and Russia on this continent, that the same would have been arranged by treaty between the parties. To exclude the vessels of our citizens from the shore, beyond the ordinary distance to which the territorial jurisdiction extends, has excited still greater surprise.

Mr. Poletica replied February 28, only three days after the receipt of Mr. Adams' communication: —

. . . I ought, in the last place, to request you to consider, sir, that the Russian possessions in the Pacific Ocean extend, on the northwest coast of America, from Behring Strait to the fifty-first degree of north latitude, and on the opposite side of Asia, and the islands adjacent, from the same Strait to the forty-fifth degree. The extent of sea, of which these possessions form the

limits, comprehends all the conditions which are ordinarily attached to *shut seas* (*mers fermées*), and the Russian Government might consequently judge itself authorized to exercise upon this sea the right of sovereignty, and especially that of entirely interdicting the entrance of foreigners. But it preferred only asserting its essential rights, without taking any advantage of localities.

It thus became evident that the Emperor considered as belonging to him alone, not only the Bering Sea, but also, as a closed sea, all that portion of the Pacific Ocean which lies north of latitude 51° ; and that he further considered it a generous act on his part to leave all his imperial domain of sea, except a mere hundred-mile belt about its shores, free to the world for its commerce and navigation. Mr. Adams replied to Mr. Poletica's note on March 30: —

This pretension is to be considered not only with reference to the question of territorial right, but also to that prohibition to the vessels of other nations, including those of the United States, to approach within one hundred Italian miles of the coasts. From the period of the existence of the United States as an independent nation, their vessels have freely navigated those seas, and the right to navigate them is a part of that independence. . . .

The Russian Emperor's position, in asserting *mare clausum* over the Pacific Ocean as bounded by his own possessions on either side, was made absurd by Mr. Adams' simple statement that "the distance from shore to shore on this sea in latitude 51° north is not less than 90 degrees of longitude, or four thousand miles."

England had no important interests directly violated by the Russian ukase of 1821, but she possessed territory vaguely and indefinitely bounded in the northwest part of North America, and she detected in Russian claims of enlarged jurisdiction over so great an extent of sea a precedent that might in the future operate adversely to her own interests. Her protest, which was quite as vigorous as the one from Washington, is found in the Duke of Wellington's letter of November 28, 1822, to the Russian Ambassador at London: —

. . . The second ground on which we object to the ukase is that His Imperial Majesty thereby excludes from a certain considerable extent of the open sea vessels of other nations. We contend that the assumption of this power is contrary to the law of nations; and we cannot find a negotiation upon a paper in which it is again broadly asserted. We contend that no power whatever can exclude another from the use of the open sea; a power can exclude itself from the navigation of a certain coast, sea, etc., by its own act or engagement, but it cannot by right be excluded by another. This we consider as the law of nations. . . .

These protests from the eagle and the lion succeeded in enlightening the bear, for Russia immediately began to recognize the feebleness of her asserted right to control the North Pacific Ocean. After a short period of correspondence, Russia yielded all these exaggerated pretensions and made a treaty with the United States (April 17, 1824), in which it was agreed:—

. . . that, in any part of the Great Ocean, commonly called the Pacific Ocean, or South Sea, the respective citizens or subjects of the high contracting powers shall be neither disturbed nor restrained, either in navigation or in fishing, or in the power of resorting to the coasts, upon points which may not already have been occupied, for the purpose of trading with the natives, saving always the restrictions and conditions determined by the following articles.

The “conditions and restrictions” referred to illicit trading and the formation of settlements.

By the fourth article of this convention Russia granted to United States vessels, for a period of ten years, the privilege of frequenting “without any hindrance whatever the interior seas, gulfs, harbors, and creeks upon the coasts mentioned in the preceding article for the purpose of fishing and trading with the natives of the country.” By this treaty also Russian possessions in North America were limited on the south by the 54° 40' parallel of latitude.

When the stipulated period of ten years had elapsed, the United States sought to renew the privilege of trading with the natives of Alaska and of navigating the inner waters of

the coast north of latitude $54^{\circ} 40'$. This favor Russia obstinately refused to grant, although the remaining articles of the treaty continued always in force. It seems to have been suspected in the United States that Russia would consider her jurisdiction over a hundred-mile marine belt reëstablished by the expiration of the fourth article of her treaty, notwithstanding the fact that that part of the treaty surrendering all claims to exclusive navigation of the Great Ocean or South Sea remained operative. John Adams at the time expressed himself in his diary as able to down Russian argument, but unable to silence Russian cannon. American vessels continued, however, to navigate the Bering Sea with perfect freedom, and Russia never again actually asserted the right of *mare clausum* over that body of water, nor apparently considered it otherwise than as a part of the great Pacific Ocean, or "South Sea."

Such, then, was the situation in 1867, when the United States purchased the territory of Alaska and came into possession of all Russian rights of trade and navigation in Bering Sea. Beyond its several thousand miles of coast line, this great territory was practically a *terra incognita* to all but a few adventurous explorers and trappers who had penetrated its vast wilderness. Its purchase was largely brought about through a friendly feeling on the part of the United States to meet half-way Russia's desire to dispose of her American possessions, while at the same time she hoped rather than expected that the future might develop valuable natural resources in this far-away region, when civilization, in its westward progress, should gain its shores and ascend its great river.

The description of the western boundary of the cession, already referred to, led to some ambiguity, even at that day, as to what extent of jurisdiction the United States might rightfully claim over the waters of Bering Sea. The question whether Russia intended to convey, or even could convey, within the limits of law, dominion over the waters of Bering Sea, outside the ordinarily recognized three-mile limit of marine jurisdiction, did not at once assume great importance.

In framing laws for the territory the following year (1868), Congress did not clearly signify the extent to which the United States claimed jurisdiction in Bering Sea, but simply enacted that the "laws of the United States relating to customs, commerce, and navigation, are extended to and over all the mainland, islands, and waters of the territory ceded to the United States by the Emperor of Russia . . .", and further enacted that, "no person shall kill any otter, mink, martin, sable, or fur-seal, or other fur-bearing animals within the limits of Alaska territory, or *in the waters thereof*. . . ."

Thus the United States asserted its dominion over Alaska and *the waters thereof*, the phrase "waters thereof" unfortunately being left to the various interpretations of public opinion, as shaped or fashioned by future national interests. This ambiguity of expression was destined finally to play an important part in a serious international complication.

Two great industries at once developed in Alaska, — the salmon fisheries and the capture of fur-bearing animals. Of these by far the most important was the pursuit of sealing. The fur of seals is exceptionally fine, and being always in demand, has commanded high prices in the markets of the world.

The fur-seal, known to zoologists as *Callorhinus ursinus*, resembles biologically a form of marine bear, and should not be confounded with the true seal of our Pacific coast, from which it differs in several respects.

There are three herds of these marine creatures that annually visit the islands of the North Pacific. These herds do not mingle, but have each their own particular breeding-ground, to which they annually repair. One herd inhabits Robin Island, in the Okhotsk Sea; one the Commander Islands which lie on the Russian side of Bering Sea; and the third (in point of numbers the most important, and known as the "American herd" in contradistinction to the other two, or "Asiatic herds"), inhabits the Pribyloff Islands — a group of small islands on the American side of Bering Sea. To these islands the seals resort in great numbers during the latter part of May or the first part of June. The males

arrive first, and taking positions along the shore, each pre-empting, so to speak, a certain space sacred to himself, and there awaits the coming of the females. As they appear, arriving day by day from the sea, great confusion reigns along the shores of the rookeries. Desperate struggles for the females follow, and when a degree of peace is restored in the course of a few days, there results an establishment of many approximately permanent polygamous family groups more or less densely crowded along the littoral of the islands. The younger male seals, known as "bachelors," are unable to cope with the older and stronger ones in their fierce contests for possession of the females. They retire and herd together, a discontented throng, at some distance from their jealous elders. The old males keep constantly on the alert to protect their homesteads from the intrusion of other males, or to prevent the members of their own households from deserting them. So jealous are they of their "wives" that they dare not venture away from their positions on shore during the entire breeding season, not even in search of food. The females, soon after landing, give birth to their young, each bearing a single "pup." These helpless little creatures are carefully nurtured by their mothers until they learn to swim and can shift for themselves. The females in search of food make frequent excursions to sea during the breeding season, often going as far as two hundred miles from the island rookeries, at which distance they have been frequently observed disporting themselves, or quietly sleeping upon the surface of the water. They always return to the care of their young and to the protection of their watchful lords and masters.

Thus the seals constituting the "American herd" live upon the Pribyloff rookeries from the time of their annual coming in May and June until the late autumn, when the forces of Boreas besiege the islands and the northern seas become tempestuous. The seals then slip into the surf for their long annual swim to the south. They migrate leisurely through various passes between the Aleutian Islands, thence southward in the open Pacific to about latitude 35° (opposite San Francisco), then making a long sweep inland they

follow a northerly course along the American coast. No landing is made until the following May or June, when, in obedience to their instincts, they once more return to their common rendezvous on the Pribyloff Islands. The life habits of the seals of the Asiatic herds are in all respects identical, their winter migrations being south along the Asiatic coast to the neighborhood of Japan.

Under the organized sealing industry of the chartered American Company, a fixed number of "bachelors" only were killed, the female seals being left unmolested along with old males, the pelts of the latter being quite useless for commercial purposes.

Shortly after the discovery of the Pribyloff Islands in 1786, the number of fur-seals annually captured at the rookeries has been variously estimated among the millions. The unlimited slaughter of the seals and the consequent danger of their extinction obliged the Russian Government to enact prohibitory laws from time to time for their protection. At the time of the American acquisition of Alaska, the Russian-American Company (chartered by Russia and which enjoyed the monopoly of the Alaskan trade) was shipping annually to New York and London upon an average forty thousand skins. Notwithstanding this seemingly large yearly capture, seals were vastly increasing in numbers.

In 1868-69 attention at Washington was especially directed to the great value of the sealing industry, and also to the wisdom of taking active measures to prevent a wholesale slaughter of seals by rival companies that quickly occupied the field when the Russian company went out of existence. Unmindful of the future and eager for immediate gain, these irresponsible hunters sought to kill the goose for her golden eggs. Accordingly the islands of the Pribyloff group were declared to be a governmental reserve, and by virtue of an Act of Congress, July 1, 1870, the killing of "any fur-seal upon the islands of St. Paul and St. George or in the waters adjacent thereto, excepting during the months of June, July, September, and October in each year" was prohibited. It was also declared unlawful to kill such seals at any time by the

use of fire-arms, or by any means which tended to drive them away from those islands. The Secretary of the Treasury was further empowered to lease to proper and responsible parties, for a period of twenty years, "the right to engage in the business of taking fur-seals on the islands of St. George and St. Paul"; Secretary Boutwell thereupon granted to the Alaska Commercial Company the sole privilege of capturing seals upon those islands. The company according to the terms of this lease was obliged to pay annually into the Treasury of the United States the sum of \$55,000, besides the sum of 62½ cents for each skin taken. Under proper restrictions such care was taken by the company in killing only the "bachelors,"—the two to four year old males,—that the number of seals sojourning upon the islands each year showed no signs of diminution, despite the fact that the company was authorized to take annually one hundred thousand pelts. During the twenty years' operations of the Alaska Commercial Company in the Pribyloff Islands, the prices of sealskins advanced from \$2.50 in 1868 to \$30 in 1890. At the expiration of its lease, the company had paid into the Treasury of the United States the large sum of \$5,956,065.67.

The contract proved to be an exceedingly profitable one for the company as well, and the reports of its success soon spread far and wide. Expeditions were fitted out by ship-owners in British Columbia, in Hawaii, and even in Australia, to engage in the hunt for seals. As the Alaska Company was protected in its monopoly of seal catching on the islands of St. Paul and St. George of the Pribyloff group, and as the few Russian islands, to which the other seal herds repaired, were similarly protected by Russian laws, the method followed by these free rovers was to drift about in the open waters of the sea, often in the neighborhood of the passes between the Aleutian Islands, and thus intercepting the seals in their annual migration north or south, capture them in the water. This method of attack was exceedingly destructive to the herd. It was impossible that a discrimination could be made between the males and females, and in killing the females a double slaughter was effected. Besides this,

many of the animals were wounded and lost, and it was apprehended by the American sealers that the continuation of the practice of pelagic sealing would soon result in the extermination of the species.

The Collector of the port at San Francisco, Mr. Phelps, having been apprised of the dangers threatening the industry so comfortably prospering in St. Paul and St. George, wrote to the Secretary of the Treasury in 1872, asking permission to despatch a revenue cutter to the scene of action for the purpose of preventing pelagic sealing. Mr. Boutwell, the Secretary of the Treasury, in reply said, "I do not see that the United States would have the jurisdiction or power to drive off parties going up there for that purpose unless they made such attempts within a marine league of the shores." This was the first official expression touching upon the doubtful words, "or in the waters thereof." It clearly indicated that the government in Washington at that date interpreted those words of the Act of Congress of 1868 to mean the ordinary three miles of marine jurisdiction. Destructive to American interests as pelagic sealing might prove to be, the United States in 1872 did not see its way clear in preventing it by force; accordingly no revenue cutter was sent to Bering Sea.

Each succeeding year witnessed an increase in pelagic sealing. New vessels were being fitted out every season to engage in the exceedingly profitable occupation of seal hunting in and about the passes of the Aleutian Islands, and frequent incursions were made for the same purpose into Bering Sea. Continued protests from the Alaska Company found their way to Washington, and evidence of the gradual diminution of the herd through the wanton slaughter of seals by the pelagic hunters was repeatedly furnished to the authorities of the Treasury Department. It soon became distressingly apparent that unless seal hunting in the open sea could be prevented, the total extinction of the animals was a question of only a few years.

Now if the United States could establish a claim of *mare clausum* over Bering Sea, the problem of ways and means of preventing pelagic sealing in Bering Sea would be solved.

Could the same exclusive dominion be established over that sea that the United States exercised over Chesapeake Bay or Long Island Sound, her right to control its waters would be complete. Then, with Revenue cutters on guard during the season of the migration of the seals, marauders could be warned away or their vessels seized and condemned under the statute laws of 1868 and 1870 (*Supra*). The temptation to set up a claim of *mare clausum* was great.

In 1881, D. A. d'Ancona, Collector of the Port at San Francisco, disturbed by reports of sealing expeditions which were being fitted out in British Columbia, wrote to the Treasury Department (as had his predecessor, Mr. Phelps, in 1872), asking for more definite information regarding the extent of American dominion in Bering Sea. The reply of Mr. French, Acting Secretary of the Treasury, March 12, 1881, marks a complete reversal of the position assumed by the government in 1872, as expressed in Mr. Boutwell's letter already referred to. Mr. French wrote as follows:—

You inquire into the interpretation of the terms "waters thereof" and "waters adjacent thereto," as used in the law, and how far the jurisdiction of the United States is to be understood as extending.

Presuming your inquiry to relate more especially to the waters of western Alaska, you are informed that the treaty with Russia of March 30, 1870, by which the territory of Alaska was ceded to the United States, defines the boundary of the territory so ceded. The treaty is found on pages 671 to 673 of the volume of treaties of the Revised Statutes. It will be seen therefrom that the limit of the cession extends from a line starting from the Arctic ocean and running through Behring Strait to the north of St. Lawrence Islands. The line runs then in a southwesterly direction, so as to pass midway between the island of Attou and Copper island of the Komondorski couplet or group in the North Pacific Ocean, to meridian of 193 of west longitude. *All the waters within that boundary to the western end of the Aleutian Archipelago and chain of islands are considered as comprised within the waters of Alaska territory.*"

Thus it will be seen that in order to gain the right to protect seals while in Bering Sea, the United States yielded to

the temptation and assumed jurisdiction over the entire stretch of its waters (east of the imaginary line designated as the boundary line of Alaska), claiming it to be a *mer fermée*, or closed sea, in the same category indeed as any coastwise harbor, notwithstanding the fact that Bering Sea is of vastly greater geographical extent than any harbor. While believing herself justified in so doing, the United States made no actual captures of sealing vessels at that time. Pelagic sealing nevertheless continued. In 1886 Mr. Manning, Secretary of the Treasury, addressed a letter to Collector Hagan of the port of San Francisco, affirming the ruling of Acting Secretary French, as follows:—

I transmit herewith for your information a copy of a letter addressed by the Department on the 12th of March, 1881, to D. A. d'Ancona, concerning the jurisdiction of the United States in the waters of the territory of Alaska and the prevention of the killing of fur-seals and other fur-bearing animals within such areas as prescribed by chapter 3, title 23, of the Revised Statutes. The attention of your predecessor in office was called to the subject on the 4th of April, 1881. This communication is addressed to you, inasmuch as it is understood that certain parties at your port contemplate the fitting out of expeditions to kill fur-seals in these waters. You are requested to give due publicity to such letters, in order that such parties may be informed of the construction placed by this Department upon the provision of law referred to."

Fortified by this further statement of the government's position regarding United States control of the waters of Bering Sea, the Treasury officials on the Pacific coast determined to take a stand against further poaching in what had been declared by their chief to be American waters. Accordingly the United States revenue cutter *Corwin* proceeded to Bering Sea, and in August of that year (1886) seized three British vessels,—the *Onward*, *Carolina*, and *Thornton*,—all being at the time of their seizure considerably more than three miles from shore. They were engaged as alleged, in capturing seals in violation of Section 1956 of the Revised Statutes of the United States, which made it unlawful to kill seals "within the limits of Alaska territory or *in the waters thereof*." These three vessels were taken to Sitka, tried

before the District Court of Alaska, their masters found guilty, and the vessels were accordingly confiscated and condemned to be sold. In the trial of these vessels their owners advanced the following argument in defence of their rights:—

The first question then to be decided is what is meant by the “waters thereof.” If the defendants are bound by the treaty between the United States and Russia ceding Alaska to the United States, then it appears that Russia in 1822 claimed absolute territorial sovereignty over the Behring Sea, and purported to convey practically one-half of that sea to the United States. But are the defendants, as men belonging to a country on friendly terms with the United States, bound by this assertion of Russia? And can the United States claim that the treaty conveys to them any greater right than Russia herself possessed in these waters? In other words, the mere assertion of a right contrary to the comity of nations can confer on the grantees no rights in excess of those recognized by the laws of nations.

It also appears that the United States in claiming sovereignty over the Behring Sea is claiming something beyond the well-recognized law of nations, and bases her claim upon the pretensions of Russia, which were successfully repudiated by both Great Britain and the United States. A treaty is valid and binding between the parties to it, but it cannot affect others who are not parties to it. It is an agreement between nations, and would be construed in law like an agreement between individuals. Great Britain was no party to it and therefore is not bound by its terms. *

The American position, on the other hand, may well be presented in the following words taken from the charge to the jury, made by Judge Dawson of the District Court of Alaska in the libel proceeding against these vessels:—

All the waters within the boundary set forth in this treaty to the western end of the Aleutian archipelago and chain of islands are to be considered as comprised within the waters of Alaska, and all the penalties prescribed by law against the killing of fur-bearing animals must, therefore, attach against any violation of law within the limits heretofore described.

If, therefore, the jury believe from the evidence that the defendants by themselves or in conjunction with others did, on or about the time charged in the information, kill any otter, mink, marten, sable, or fur-seal, or other fur-bearing animal or animals, on the

shores of Alaska or in the Behring Sea, east of the one hundred and ninety-third degree of west longitude, the jury should find the defendants guilty.

In delivering this charge to the jury, Judge Dawson acted under the advice of the Attorney General in Washington, and the United States was now fully committed to the policy of maintaining at any cost its position of absolute ownership of the Bering Sea east of the line described in the treaty for the cession of Alaska as marking the western boundary of that dominion. The seizure and condemnation of these three British vessels were immediately followed by a formal protest from the British Minister in Washington, Sir Lionel Sackville-West (letter of October 21, 1886).

An issue, accordingly, was squarely presented for future diplomatic negotiations. Pending further discussion, President Cleveland very properly ordered all proceedings against the three vessels stopped. The following summer, however, the United States revenue cutter *Richard Rush* arrested more British sealing vessels, — the *W. P. Sawyard*, the *Dolphin*, the *Grace*, the *Anna Beck*, and the *Alfred Adams*. These, like the vessels captured the year before, were all taken outside the ordinary zone of marine jurisdiction, and their seizure intensified the feelings of resentment against the United States that had already been manifested in Canada after the condemnation proceedings of the previous year. Another British protest quickly followed (Sackville-West to Bayard, October 12 and 19, 1887), and the question, now fairly launched into the sea of diplomatic discussion, became the subject of a spirited correspondence.

In the meantime, however, Secretary of State Bayard had made an attempt to find a settlement of the difficulty in an international agreement for the regulation of the fur-seal industry. Notes were addressed to Great Britain, France, Germany, Russia, Japan, Norway and Sweden, inviting those powers to "enter into such arrangement with the Government of the United States as will prevent the citizens of either country from killing the seals in Bering Sea at such times and places and by such methods as at present are pursued, and

which threaten the speedy extermination of those animals and consequent loss to mankind." It was ordered that no seizures of sealing vessels be made during the season of 1888, and the negotiations for international agreement seemed promising for a successful issue, when, in June of that year, the Marquis of Salisbury announced his intention of withdrawing from the proceeding. This was owing to a request received by him from the Canadian government to await the completion of a memorandum it was preparing upon the subject of American and Canadian interests in Bering Sea. As England's coöperation in any scheme of settlement of the difficulty was absolutely necessary, the negotiations for an international agreement, so happily begun, were unfortunately abandoned.

During the autumn of 1888, a careful examination of the "Bering Sea Question" was undertaken by a House committee, and an attempt was also made to obtain from Congress a revision of the laws of 1868 and 1870 relating to Alaskan fisheries, that should define more strictly the meaning of the phrase employed in the old statutes, — "Alaska and the waters thereof." There was lacking an unanimity of opinion in Congress regarding the *right* of the United States to prevent pelagic sealing by making captures of offending foreign vessels when operating outside the ordinarily accepted three-mile limit of marine jurisdiction. The press of the country, and perhaps the greater weight of popular sentiment, inclined toward the belief that a legal sanction could be found to justify the seizures of these British vessels and Judge Dawson's decision was generally indorsed. Nevertheless, an irritating doubt as to the authority of the United States to maintain jurisdictional claims in the Bering Sea haunted the Senate corridors. The extent and general configuration of that body of water seemed to preclude the idea of a closed sea, — especially in the light of the well-known fact that the modern tendency of international usage was to restrict the scope of marine jurisdiction. All agreed that pelagic sealing was a pernicious practice and highly detrimental to American interests, and although the attempt to stop it by force seemed to many a

questionable proceeding, yet the policy, — “when in doubt, err on the side of your country’s cause,” — prevailed. At all events, any definite expression of Congress defining the vague words, “or in the waters thereof,” was most desirable.

The House passed a bill declaring that: “That section 1956 of the Revised Statutes of the United States was intended to include and apply, and is hereby declared to apply to all the waters of Bering Sea and Alaska embraced within the boundary lines mentioned and described in the Treaty with Russia, dated March 30, 1867, by which the territory of Alaska was ceded to the United States. . . .” Senator Sherman, Chairman of the Committee of Foreign Relations, objected to the measure on the grounds that it “involved serious matters of international law . . . and ought to be disagreed to and abandoned, and considered more carefully hereafter.” The House resolution was, however, amended and passed the Senate March 22, 1880, as follows: —

“That Section 1956 of the Revised Statutes of the United States is hereby declared to include, and apply to, all the Dominion of the United States in the waters of Bering Sea.”

The measure then, as finally passed, was no more explicit in its object of determining the extent of United States jurisdiction in Bering Sea waters than was the law of 1868, for what the State Department had especially called for and desired was a definition by Congress of the very words “Dominion of the United States in the waters of Bering Sea.”

In March, 1889, the Harrison administration fell heir to the responsibilities of maintaining the American position in this controversy. Ex-Secretary Foster, in the *North American Review* of December, 1895, thus clearly states the situation as it existed at that time: —

Three courses were open to President Harrison, and one of them must be chosen without further delay. First: He could abandon the claim of exclusive jurisdiction over Bering Sea or protection of the seals beyond the three-mile limit, recede from the action of his predecessor as to seizure of British vessels and pay the damages claimed therefor. Such a course would have met with the general disapproval of the nation, and would have been

denounced by his political opponents as a base betrayal of the country's interests. Second: He could have rejected the arguments and protests of the British Government, and continued the policy initiated by his predecessor in the seizure of all British vessels engaged in pelagic sealing in Bering Sea. But this course had already been proposed to President Cleveland and decided to be improper. The Hon. E. J. Phelps, who, as Minister to Great Britain, had conducted the negotiations with Lord Salisbury growing out of the seizures of 1886 and 1887, in a lengthy despatch to Secretary Bayard, reviewing the conduct of Canada which had prevented an adjustment once accepted by Lord Salisbury, made the following recommendation: "Under these circumstances, the Government of the United States must, in my opinion, either submit to have these valuable fisheries destroyed or must take measures to prevent their destruction by capturing the vessels employed in it. Between these two alternatives it does not appear to me there should be the slightest hesitation. . . . I earnestly recommend, therefore, that the vessels that have been seized while engaged in this business be firmly held, and that measures be taken to capture and hold every one hereafter found concerned in it. . . . There need be no fear that a resolute stand on this subject will at once put an end to the mischief complained of." But this recommendation of Mr. Phelps was not approved by Mr. Bayard, who was unwilling to adopt a course which might bring about a rupture with Great Britain, the probable outcome of which would have been an armed conflict. In view of this decision and the state of public sentiment, with a prevailing opinion in a large part of the press and with public men that the attitude of the government was legally unsound, and that the interests involved did not under the circumstances stated justify the hazard of a great war between these two English-speaking nations, the adoption of this second alternative by President Harrison would have been the height of madness. The only remaining alternative was arbitration.

The idea of arbitration came only after a desperate attempt through a diplomatic correspondence with the British foreign office to establish the legality of the American position and to justify United States seizures of the British vessels that had already been made on the high seas.

No arrangements having been made to abandon the sealing operations pending a final settlement of the question, several captures of British schooners were effected in the summer

season of 1889, and the friendly relations between England and the United States became very much strained. The British Government resolved to take a firmer stand against further molestation of their subjects engaged in catching seals upon what they contended were the high seas, and before the summer of 1890 opened, it presented through the note of Sir Julian Pauncefote of June 14, 1890, the following vigorous protest:—

The undersigned, Her Britannic Majesty's envoy extraordinary and minister plenipotentiary to the United States of America, has the honor, by instruction of his government, to make to the Hon. James G. Blaine, Secretary of State of the United States, the following communication:—

Her Britannic Majesty's Government have learned with great concern, from notices which have appeared in the press, and the general accuracy of which has been confirmed by Mr. Blaine's statements to the undersigned, that the Government of the United States have issued instructions to their revenue cruisers about to be despatched to Behring Sea, under which the vessels of British subjects will again be exposed, in the prosecution of their legitimate industry on the high seas, to unlawful interference at the hands of American officers.

Her Britannic Majesty's Government are anxious to coöperate to the fullest extent of their power with the Government of the United States in such measures as may be found to be expedient for the protection of the seal fisheries. They are at the present moment engaged in examining, in concert with the Government of the United States, the best method of arriving at an agreement upon this point. But they cannot admit the right of the United States of their own sole motion to restrict for this purpose the freedom of navigation of Behring Sea, which the United States have themselves in former years convincingly and successfully vindicated, nor to enforce their municipal legislation against British vessels on the high seas beyond the limits of their territorial jurisdiction.

Her Britannic Majesty's Government are therefore unable to pass over without notice the public announcement of an intention on the part of the Government of the United States to renew the acts of interference with British vessels navigating outside the territorial waters of the United States, of which they have previously had to complain.

The undersigned is in consequence instructed formally to protest against such interference, and to declare that Her Britannic Majesty's Government must hold the Government of the United States responsible for the consequences that may ensue from acts which are contrary to the established principles of international law.

Mr. Blaine, the Secretary of State, had in the meanwhile entered upon a lively correspondence with Lord Salisbury in defence of the American case. Every argument that could be brought to bear upon the subject in support of the American position was marshalled by this brilliant statesman in opposition to the English contention of a full legal right to catch seals in the Bering Sea, or indeed in any other sea not *mer fermée* outside of the three-mile limit from shore.

Casting aside for the time all claims to *mare clausum*, Mr. Blaine urged that, "In the opinion of the President, the Canadian vessels arrested and detained in the Behring Sea were engaged in a pursuit that was in itself *contra bonos mores*, a pursuit which of necessity involves a serious and permanent injury to the rights of the Government and people of the United States." In support of this argument he reviewed the history of sealing, alleging that "Those fisheries had been exclusively controlled by the Government of Russia, without interference and without question, from their original discovery until the cession of Alaska to the United States in 1867. From 1867 to 1886 the possession in which Russia had been undisturbed was enjoyed by this government also. There was no interruption and no intrusion from any source. Vessels from other nations passing from time to time through Behring Sea to the Arctic Ocean in pursuit of whales had always abstained from taking part in the capture of seals. This uniform avoidance of all attempts to take fur-seal in those waters had been a constant recognition of the right held and exercised first by Russia and subsequently by this Government." He dwelt with particular emphasis upon the destructive character of pelagic sealing. "The killing of seals in the open sea involves the destruction of the female



in common with the male. The slaughter of the female seal is reckoned as an immediate loss of three seals, besides the future loss of the whole number which the bearing seal may produce in the successive years of life. The destruction which results from killing seals in the open sea proceeds, therefore, by a ratio which constantly and rapidly increases, and insures the total extermination of the species within a very brief period. It has thus become known that the only proper time for the slaughter of seals is at the season when they betake themselves to the land, because the land is the only place where the necessary discrimination can be made as to the age and sex of the seal. It would seem, then, by fair reasoning, that nations not possessing the territory upon which seals can increase their numbers by natural growth, and thus afford an annual supply of skins for the use of mankind, should refrain from the slaughter in open sea, where the destruction of the species is sure and swift."

"The entire business," he continued, "was then (before 1889) conducted peacefully, lawfully, and profitably — profitably to the United States, for the rental was yielding a moderate interest on the large sum which this government had paid for Alaska, including the rights now at issue; profitably to the Alaskan Company, which, under governmental direction and restriction, had given unwearied pains to the care and development of the fisheries; profitably to the Aleuts, who were receiving a fair pecuniary reward for their labors, and were elevated from semi-savagery to civilization and to the enjoyment of schools and churches provided for their benefit by the government of the United States; and, last of all, profitably to a large body of English laborers who had constant employment and received good wages." Led on by the impetus of his own reasoning, he attempted to set up a prescriptive right acquired by Russia through the acquiescence of all nations in her large claim of jurisdiction over Bering Sea. He asked, "Whence did the ships of Canada derive the right to do in 1886 that which they had refrained from doing for more than ninety years? Upon what grounds did Her Majesty's Government defend in the year 1886 a course of

conduct in the Behring Sea which she had carefully avoided ever since the discovery of that sea? By what reasoning did Her Majesty's Government conclude that an act may be committed with impunity against the rights of the United States which had never been attempted against the same rights when held by the Russian Empire?" To justify further the American assertion of right in this case to seize foreign vessels, when outside the three-mile limit and engaged in the pernicious practice of pelagic sealing, he called Lord Salisbury's attention to parallel cases where England asserted the same privileges. "It is doubtful whether Her Majesty's Government would abide by this rule if the attempt were made to interfere with the pearl fisheries of Ceylon, which extend more than twenty miles from the shore line, and have been enjoyed by England without molestation ever since their acquisition. . . . Nor is it creditable that modes of fishing on the Grand Banks, altogether practicable but highly destructive, would be justified or even permitted by Great Britain on the plea that the vicious acts were committed more than three miles from shore." No laws of the sea or land, however supported by the approval of nations, should be used to protect acts in themselves vicious or harmful to the world's best interest. To quote again: "In the judgment of this government the law of the sea is not lawlessness. Nor can the law of the sea and the liberty which it confers and which it protects, be perverted to justify acts which are immoral in themselves, which inevitably tend to results against the interests and against the welfare of mankind. One step beyond that which Her Majesty's Government has taken in this contention, and piracy finds its justification."

In reply to Mr. Blaine's argument, Lord Salisbury, in behalf of England's position, stoutly maintained that in times of peace no nation was privileged to seize and search upon the high seas the private vessel of a friendly nation, save upon the suspicion of piracy, or in pursuance of some special agreement. Continuing: "But Her Majesty's Government must question whether this pursuit can of itself be regarded as *contra bonos mores*, unless and until, for special reasons, it

has been agreed by international arrangement to forbid it. Fur-seals are indisputably animals *feræ naturæ*, and these have universally been regarded by jurists as *res nullius* until they are caught; no person, therefore, can have property in them until he has actually reduced them into possession by capture. It requires something more than a mere declaration that the government or citizens of the United States, or even other countries interested in the seal trade, are losers by a certain course of proceeding, to render that course an immoral one. Her Majesty's Government would deeply regret that the pursuit of fur-seals on the high seas by British vessels should involve even the slightest injury to the people of the United States. If the case be proved, they will be ready to consider what measures can be properly taken for the remedy of such injury, but they would be unable on that ground to depart from a principle on which free commerce on the high seas depends."

In answer to Mr. Blaine's contention that Russia had gained a prescriptive right, through her exclusive control of the Bering Sea fisheries, from the discovery of Alaska until 1867, and that the United States had since that date come into possession of, and had continued to enjoy, these same exclusive rights (thereby establishing more firmly her own prescriptive title), Lord Salisbury referred to the numerous American and English official protests (already mentioned *supra*), against the early Russian assumptions in Bering Sea. He quoted as well the words of many prominent American statesmen, that had been uttered in condemnation of Russia's illegal claims over the high seas in excess of the ordinary three-mile limit of marine jurisdiction. In further refutation of Mr. Blaine's argument, he furnished a long list of British vessels that had been engaged in the pursuit of sealing in Bering Sea since the acquisition of Alaska by the United States. To Mr. Blaine's assertion that "The President is persuaded that all friendly nations will concede to the United States the same rights and privileges on the lands and in the waters of Alaska which the same friendly nations always conceded to the Empire of Russia" — he frankly



replied: "Her Majesty's Government have no difficulty in making such a concession. In strict accord with the views which, previous to the present controversy, were consistently and successfully maintained by the United States, they have, whenever occasion arose, opposed all claims to exclusive privileges in the non-territorial waters of Behring Sea. The rights they have demanded have been those of free navigation and fishing in waters which, previous to their own acquisition of Alaska, the United States declared to be free and open to all foreign vessels."

"That is the extent of their present contention and they trust that, on consideration of the arguments now presented to them, the United States will recognize its justice and moderation."

Not in the least disconcerted by these arguments from London, nor by Lord Salisbury's seemingly clear exposition of the principles of international law touching the case, Mr. Blaine again entered the lists with his adroit pen. He critically reviewed the history of Russian and American claims in the Bering Sea, and by an ingenious argument to substantiate his contention of a prescriptive right in the United States to control the waters of Bering Sea, he endeavored to prove that the protests of John Quincy Adams, and of other American statesmen referred to by Lord Salisbury, against the Russian claims of the ukase of 1821, were directed, not against Russian claims in Bering Sea proper, but only against the Russian assertions to exclusive jurisdiction from Bering Strait *along the entire northwest coast of America to the fifty first parallel of latitude*. "Against this larger claim of authority," he urged, (*viz.*, extending farther south on the American coast to the 51° north latitude), "Mr. Adams vigorously protested." Mr. Blaine, therefore, drew a distinction between the "Bering Sea," as such, and the "Pacific Ocean," maintaining that the United States had never opposed by word or deed Russia's claim to exclusive jurisdiction north of the Aleutian Islands, *i.e.* the Bering Sea, but had only denied Russia's right to exercise such control of the waters south of the Aleutian Islands, *i.e.* the Pacific Ocean, and as expressed

in the ukase of 1821 by the words, "All along the northwest coast of America, from Bering Strait to the 51st parallel of latitude." He endeavored further to show that the English protests against Russian sovereignty over the Pacific Ocean were made with a similar intention and meaning, and therefore concluded, — Why should not the United States enjoy the same exclusive jurisdiction over the waters of Bering Sea, that Russia had asserted and maintained without opposition during so long a period of years?

Lord Salisbury denied the correctness of Mr. Blaine's interpretation of the words "Pacific Ocean," and insisted that by the terms of the ukase the "Pacific Ocean" extended to Bering Strait, and included the Bering Sea, and that, therefore, the American and English protests before referred to were actually directed against Russian claims in the Bering Sea, as well as against her claims over the ocean south of the Bering Sea. He attacked the implied American contention of *mare clausum* as applied to the Bering Sea, and offered in the end to arbitrate the whole matter.

The drift of these arguments had brought the American and English contentions to a single issue, — the question whether the protests of both the United States and England against the hundred-mile limit of Russian sovereignty in the Pacific Ocean from Bering Strait down the northwest coast of America to 51° latitude, and down the Siberian coast to the 45° 50' latitude, were directed against those Russian claims in the Bering Sea, or only in the Pacific Ocean exclusive of the Bering Sea. Had Russia really been unmolested in her extraordinary assumption of sovereignty in the waters of Bering Sea, or had her claims been met and opposed by foreign protest? Obviously, the discussion hinged upon the meaning of the words "Pacific Ocean." Mr. Blaine, accepting this issue, went so far as to say: "If Great Britain can maintain her position that the Behring Sea at the time of the treaties with Russia of 1824 and 1825 was included in the Pacific Ocean, the government of the United States has no well-grounded complaint against her. If, on the other hand, this government can prove beyond all doubt that the Behring Sea, at

the date of the treaties, was understood by the three signatory powers to be a separate body of water, and was not included in the phrase 'Pacific Ocean,' then the American case against Great Britain is complete and undeniable."

Further argument was useless. Both powers stood firmly by their respective positions, and the case, stripped of non-essentials by the exhaustive pleadings of the English premier and the American Secretary of State, had been narrowed down to comparatively simple issues. The question called for an immediate settlement. That same year, 1890, the twenty-year lease of the Alaska Commercial Company expired, and the North American Commercial Company succeeded with a fresh twenty-year lease. The seal herd had by this time become greatly reduced in numbers, and ample evidence was furnished by the alarming annual decrease of the size of the herd to demonstrate that the total extinction of the species was already a promise of the near future, unless some arrangement with England could be made to prevent pelagic sealing. Canadians were determined to exercise their right of catching seals upon the high seas, and the United States Government had become equally determined to seize and condemn any vessel found "poaching" in Bering Sea. It was feared that the following season's operation in Alaskan waters might bring the dreaded clash between the two great powers. Their interests in the North Pacific seemed hopelessly to conflict; their determinations to protect their own subjects in the exercise of their so-believed respective rights were firmly fixed, and their patience and good will were already sorely tried. It was at this critical stage of the controversy the two nations happily agreed to submit the matter to a tribunal of arbitration.

Owing to this rapid decline in numbers of seals resorting to the islands, the North American Company was restricted by a Treasury order to a catch of only 20,000 pelts for the year 1890, and pending the negotiation of a treaty of arbitration, the following agreement with England was effected June 15, 1891:—

MODUS VIVENDI.

1. Her Majesty's Government will prohibit, until May next, seal killing in that part of Behring Sea lying eastward of the line of demarkation described in Article No. 1 of the treaty of 1867 between the United States and Russia, "and will promptly use its best efforts to insure the observance of this prohibition by British subjects and vessels."

2. The United States Government will prohibit seal killing for the same period in the same part of Behring Sea, and on the shores and islands thereof, the property of the United States (in excess of 7,500 to be taken on the islands for the subsistence and care of the natives), and will promptly use its best efforts to insure the observance of this prohibition by United States citizens and vessels.

3. Every vessel or person offending against this prohibition in the said waters of Behring Sea outside of the ordinary territorial limits of the United States, may be seized and detained by the Naval or other duly commissioned officers of either of the High Contracting Parties, but they shall be handed over as soon as practicable to the authorities of the nation to which they respectively belong, who shall alone have jurisdiction to try the offence and impose the penalties for the same. The witnesses and proofs necessary to establish the offence shall also be sent with them.

4. In order to facilitate such proper inquiries as Her Majesty's Government may desire to make, with a view to the presentation of the case to that government before arbitrators, and in expectation that an agreement for arbitration may be arrived at, it is agreed that suitable persons designated by Great Britain will be permitted at any time, upon application, to visit or to remain upon the seal islands during the present sealing season for that purpose.

Signed and sealed in duplicate at Washington, etc.

The adoption of the *modus vivendi* put off, for a time at least, all danger of collision in Bering Sea, and the diplomatic agents of England and the United States set about framing a treaty and preparing a way for the trial of the cause. In the meantime English and American vessels were sent to Bering Sea to control the waters wherein seals were to be found and to enforce the *modus vivendi*. The commanders of these vessels were given full liberty to search suspected ships under either flag, and to arrest all offenders.

In accordance with the agreement in the *modus vivendi*,

Great Britain appointed Sir George Baden-Powell, M.P., and Professor George Mercer Dawson commissioners to proceed to the Pribyloff Islands for the purpose of examining into the fur-seal fisheries. On the part of the United States, Dr. C. Hart Merriam and Professor Mendenhall were selected in like capacity the following February.

Diplomatic efforts were immediately directed to shaping the disputed questions for inclusion in the proposed treaty, and to preparing the issues in succinct form for presentation to a tribunal of arbitration. In this matter some slight difficulty was experienced by Sir Julian Pauncefote, Mr. Wharton, and Mr. Blaine, especially in reference to questions touching the liabilities of each for injuries alleged to have been sustained by the other by reason of killing seals in Bering Sea, or through arrests, etc. In November a compromise agreement was reached upon the phraseology of this troublesome count; having framed all the issues, the negotiators were finally able to sign a treaty at Washington on February 29, 1892.

The instrument opens with an expression that "The United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, being desirous to provide for an amicable settlement of the questions which have arisen between their respective governments concerning the jurisdictional rights of the United States in the waters of Behring Sea, and concerning also the preservation of the fur-seal in, or habitually resorting to, the said sea, and the rights of the citizens and subjects of either country as regards the taking of fur-seal in, or habitually resorting to, the said waters, have resolved to submit to arbitration the questions involved. . . ."

The parties then determined upon a tribunal to be composed of seven arbitrators, two to be appointed by the President of the United States, two to be named by her Britannic Majesty, one to be named by the President of the French Republic, and one each by the King of Italy and the King of Sweden and Norway. The arbitrators were to meet in Paris within a stipulated time.

The following five points, conceived to be the real issues in the case, were expressed as follows, the award to embrace a separate decision upon each : —

1. What exclusive jurisdiction in the sea now known as the Behring's Sea, and what exclusive rights in the seal fisheries therein, did Russia assert and exercise prior and up to the time of the cession of Alaska to the United States ?

2. How far were these claims of jurisdiction as to the seal fisheries recognized and conceded by Great Britain ?

3. Was the body of water now known as the Behring's Sea included in the phrase "Pacific Ocean," as used in the treaty of 1825 between Great Britain and Russia ; and what rights, if any, in the Bering's Sea were held and exclusively exercised by Russia after said treaty ?

4. Did not all the rights of Russia as to jurisdiction, and as to the seal fisheries in Behring's Sea east of the water boundary, in the treaty between the United States and Russia of the 30th March, 1867, pass unimpaired to the United States under that treaty ?

5. Has the United States any right, and if so, what right of protection or property in the fur seals frequenting the islands of the United States in the Behring's Sea when such seals are found outside the ordinary three-mile limit ?

The question of regulations was treated in the seventh article of the convention as follows : —

If the determination of the foregoing questions as to the exclusive jurisdiction of the United States shall leave the subject in such position that the concurrence of Great Britain is necessary to the establishment of regulations for the proper protection and preservation of the fur-seal in, or habitually resorting to, the Behring Sea, the arbitrators shall then determine what concurrent regulations outside the jurisdictional limits of the respective Governments are necessary, and over what waters such regulations should extend, and to aid them in that determination the report of a joint commission to be appointed by the respective Governments shall be laid before them, with such other evidence as either Government may submit.

The high contracting parties furthermore agree to coöperate in securing the adhesion of other powers to such regulations.

The eighth article of the treaty left the question of liabilities for injuries alleged to have been sustained by the citizens of either country in connection with the arrests and condemnation of the English sealing vessels to be determined by the arbitrators upon the submission to them of all the facts.

Agreeably to the terms of the ninth article of the treaty, by which "Each government shall appoint two commissioners to investigate conjointly with the commissioners of the other government all the facts relating to seal life in Bering Sea, and the measures necessary for its proper protection and preservation," Sir George Baden-Powell, Member of Parliament, and Dr. Dawson were retained by Great Britain, as were Dr. Merriam and Professor Mendenhall by the United States, to act as such commissioners. With full instructions to investigate thoroughly the conditions of seal life and to ascertain what permanent measures were necessary for the preservation of the fur-seal species in the North Pacific Ocean, the joint commission proceeded to Bering Sea and set to work gathering material for the use of their respective governments in the arbitration trial to be held in Paris. It is not a little remarkable that side by side four scientists prosecuting the same line of inquiry, considering together the same evidence, and reading together the same incontrovertible facts, should have arrived at such widely different conclusions. The impartial observer must yield to the suspicion that the conclusions of the commissioners were colored by a desire to further the interests of their countries, and that their scientific investigation had not been wholly free from a trace of diplomacy. The American commissioners found overwhelming evidence to establish in their minds beyond all questions of doubt the fact that the seal herd had greatly diminished in size, and that such condition had been chiefly brought about by the destructive practice of pelagic sealing. They consequently recommended its entire suppression. Subsequent history has proved the correctness of these conclusions, and it is to be regretted that the case in Paris was complicated by the radically differing report of the British commissioners. They, on the other hand, somewhat begrudgingly admitted a

falling off in seal life, for which circumstance they insisted that the killing on the islands by the American company was the main cause, and they also discovered that pelagic sealing in itself was not necessarily destructive to the herd. As a remedy, if indeed a remedy were called for by existing conditions, they proposed severe restrictions in relation to the number of seals annually taken upon the islands, and as an area of protection to the seals, recommended a marine belt of ten miles about the Pribyloff Islands, within which no pelagic sealing should be permitted.

These two very contradictory reports necessarily formed the basis for the consideration of the Paris tribunal, whose office it was to determine a future course of action looking to the preservation of seals in Bering Sea.

The tribunal met in Paris in the spring of 1893, and continued its sessions well into the summer. The arbitrators chosen were Baron de Courcel (France), Marquis Emilio Visconti-Venosti (Italy), M. Gregario W. W. Gram (Sweden and Norway), Lord Hannan and Sir John S. D. Thompson (England), and Justice John M. Harlan and Senator John T. Morgan (United States). The American case was conducted through the agency of the Hon. John W. Foster (who had succeeded Mr. Blaine as Secretary of State), together with Edward J. Phelps, James C. Carter, Frederick R. Coudert, and Henry Blodget as counsel.

Although it had been expressly disavowed by Mr. Blaine that the United States put forth any claim to *mare clausum* over the Bering Sea, it is nevertheless impossible to consider the American position before the tribunal in Paris as otherwise than an attempt to justify such a contention. While no direct and formal allegation of the applicability of the principles of *mare clausum* appear in the proceedings, the United States nevertheless sought to make good its position in Bering Sea by maintaining the propriety of early Russian assertions of dominion over those waters, — or over at least a hundred-mile belt about their shores. These Russian claims in Bering

Sea cannot well be regarded other than assertions of *mare clausum*; and the attitude of the United States, taking shelter behind these early Russian assumptions, necessarily committed her in defence of those claims and principles. Again, the United States, in attempting to justify herself for having exercised an alleged right of search upon vessels of a friendly nation outside of her own legally recognized territorial waters, and in the absence of treaty stipulations authorizing her to do so, necessarily claimed sovereignty over the sea wherein the acts of visit and search had been committed. There can be no right of police over the high seas in times of peace other than as directed against suspected common enemies or pirates, and its exercise must assume proprietorship.

In the early days of Spanish and Portuguese exploration and conquest, vast oceans were demanded as the property of the State. With the growth of the British navy, certain exaggerated claims to marine proprietary rights were, for a period, advanced by England; but the spirit of modern times has been so decidedly hostile to all attempts to establish dominion over the sea that to-day civilized nations are disposed to tolerate no infraction, however slight, of the broad principle of *mare liberum*. The ultimate extent to which "territorial waters" may be urged in accordance with the present law of nations, includes only a marine belt of three miles along the open coast, and all harbors and bays whose openings to the sea do not exceed in width ten to twenty miles, or in general, such inland bodies of water, the narrowness of whose entrances from the sea and whose configuration clearly indicate them to be enclosed seas. The United States has always been conspicuously foremost in the advocacy of freedom of the high seas; she was indeed the first to protest against Russian unwillingness to accept these enlightened principles in the Pacific. It is to be regretted that in this matter the United States should have appeared before the tribunal and the civilized world in the unfortunate light of taking a step backward in order to resuscitate and reclothe a defunct mediæval doctrine.

The American case supported the contention that Russia had acquired dominion over Bering Sea by prescription, — a

right or title gained by immemorial use. Alexander I. had made formal proclamation of this title in his ukase of 1821, and counsel contended that Russia had ever after enjoyed full and undisturbed possession of her asserted proprietary right over Bering Sea until by treaty of 1867 she had parted with such rights to the United States. And it was urged that the long period of time that Russia had remained in open adverse possession of those waters, exercising all the privileges a nation enjoys over a territorial expanse of sea without protest or hindrance, had given her a full and complete prescriptive title, — which title passed unimpaired to the United States.

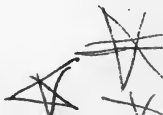
The question of Russia's undisputed exercise of her alleged rights in Bering Sea came before the tribunal as an issue of fact to be proved or disproved by weight of evidence, and the legal aspect of the question of *prescription*, its applicability to the present case, and its scope and force as a principle of the law of nations, were not touched upon by the arbitrators. It may well be doubted that even had Russia really been left undisturbed, as alleged, in her occupation of Bering Sea for a century or more, a prescriptive right to its waters would consequently ensue. There is abundant authority in international law to demonstrate that rights gained through immemorial usage do not appertain to the sea. All rights of navigation, fishing, etc., upon the high seas are of a nature that do not depend upon constant use for their validity. They may be used at will, or never used at all, — for non-use cannot imply relinquishment. Because a nation never sailed a vessel across the sea may she forever be denied the privilege? Because a nation has alone fished in a distant sea may she forever bar her neighbor from fishing there as well? Again, it is conceived that prescriptive titles may be acquired only in such things as are inherently capable of acquisition, always implying an original or prior grant constituting at least a color of title. It is incompatible with the doctrine of the freedom of the high seas to suppose any one nation is capable of acquiring rights therein above, or greater than, the common rights of all nations. Few in time past, and no one to-day, ventures to assert that Bering Sea falls within that class of enclosed

waters which form an exception to the general rule of *mare liberum*, or open free sea. Such then being the case, it is almost certain that, even had the fact of universal acquiescence in Russia's claims of dominion north of the Aleutian Islands been satisfactorily proved, a resulting prescriptive title would not have been accorded by any impartial tribunal.

It appeared at once that the American contention of Russia's exclusive sovereignty could not be maintained. Reliance had been placed in evidence afforded by certain Russian documents to establish Russia's prescriptive right to jurisdiction over those waters, and as a natural *sequitur* the similar American rights acquired by purchase. The testimony in question, upon closer scrutiny, was found to be false, and the American case, unsupported by proof, failed upon the first and second points.

The third point in the case, involving the true meaning of the term "Pacific Ocean," as employed by Russia and England in a treaty of 1825, and which in the full comprehensiveness of its meaning included the Bering Sea, was decided unanimously in favor of the English contention. This refuted Mr. Blaine's argument that English and American expressions of protest against Russian assumptions in the North Pacific had never been directed against Russian operations north of the Aleutian Islands or in Bering Sea. The object of this count was to strengthen the American prescriptive title to the waters of the Bering Sea in the event of decision favorable to the United States. But this issue having already been disposed of adversely to the United States in the first two counts, its value and importance were consequently lost.

Failing, then, in the first three points in the case, the fourth one became meaningless to the United States and was dropped without comment. This left the fifth and last issue in the case, the only one upon which the American commissioners could take a firm stand; the main force of the American argument was brought to bear upon it in an endeavor to establish a right of property in, or actual ownership of, the seals, and a consequent right of the United States to protect its own property upon the high seas.



The right of property in animals *feræ naturæ* ordinarily held or capable of acquisition by individuals or communities was discussed at great length in an exhaustive argument by Mr. Carter who endeavored to demonstrate the rightful American ownership of the seals. On this question, he urged: "The United States hold that the ownership of the islands upon which the seals breed; that the habit of the seals in regularly resorting thereto and rearing their young thereon; that their going out in search of food and regularly returning thereto, all the facts and incidents of their relations to the islands,—give to the United States a property interest therein. . . ."

The common and civil law was ransacked for cases to support this claim, and a remarkably ingenious argument was presented. The question was practically a unique one in the field of international law, and no precedent could be quoted either to sustain or defeat the American contention. The common and civil laws recognized two classes of animals,—first, those that are domesticated and tame, such as cattle, horses, dogs, etc., and in which man may possess absolute ownership; and secondly, those animals which wander about at free will and are of a wild disposition, designated as *feræ naturæ*. In this latter class, man might enjoy, under certain conditions, qualified property rights. When such creatures are captured and detained, they become personal property so long as they may be kept in actual possession; but the moment they escape and gain their liberty, property right in them instantly ceases, unless, indeed, they wander away *animo revertendi*, an intention according to habit of returning, in which case a certain qualified ownership may still exist. But the exact extent and scope of this property right in animals *feræ naturæ* that have left their confines but purpose eventually to return are not altogether clear. The particular and peculiar natures of the many species of animals that may serve man and still be considered under the head of animals *feræ naturæ*, are questions well calculated to confuse jurists and tend to make generalization upon the subject impossible. Thus, the owner of a swarm of bees

loses no property rights in the bees when they fly away to gather honey in fields other than his own; but, upon the same principle, it might be pertinently asked could Canada claim in the United States the flocks of wild geese and ducks that are hatched and bred about the northern Canadian lakes but pass the winter seasons in the United States; or, could the United States claim in Canada the deer, elk, or buffalo that cross for a day the northern frontier?

The seals could be considered domestic animals only by a strain of the imagination, and as animals *feræ naturæ* they are born and live for a period of time each year on American soil, and when they take their departure it is always with the intention of returning. By analogous arguments, therefore, from common law sources, the United States might have been shown to possess a qualified property right in these animals, sufficient even to warrant their protection when outside of American jurisdiction upon the high seas. But to have established such a right in the United States would have been to recognize and to tolerate a violation of much better established principles of international law,—the absolute freedom of the high seas.

The arbitrators (the American commissioners dissenting) decided against the American contention, holding, "That the United States have no right to protection of, or property in, the seals frequenting the islands of the United States in Bering Sea, when the same are found outside the ordinary three-mile limit."

Thus the American case was lost upon each and every legal point involved. The United States was held to possess no greater right in Bering Sea than was possessed in common by all nations. The seals were considered to be animals strictly *feræ naturæ*, and consequently, *res nullius*, or incapable of ownership when outside of national jurisdiction, or upon the high seas.

Therefore all nations had a natural and perfect right to catch these animals in any open sea, and consequently if any restrictions upon these rights, or any regulations of sealing, were to be effected, such could properly be made only through

mutual consent and agreement of the parties concerned and by treaty stipulation.

Having thus disposed of the legal question involved in the dispute in a manner adversely to American interests, the commissioners took up the report of the scientific experts upon the conditions of seal life in the North Pacific and upon the Pribyloff Islands. They sought diligently through the labyrinth of conflicting testimony for a solution of the practical question which was to preserve the seal herds.

Their deliberations finally took form in a set of regulations which, by the terms of the treaty authorizing the tribunal, should be binding equally upon the United States and England. Briefly, the regulations were, first, there shall be no killing of seals at any time or season within a zone of sixty miles around the Pribyloff Islands; second, from May 1 to July 31 shall be considered a closed season, within which time subjects or citizens of neither power shall engage in pelagic sealing in Bering Sea and the North Pacific Ocean within the area described as "the high part of the sea in that part of the Pacific Ocean, inclusive of Behring Sea, situated north of the 35th degree of north latitude, or eastward of the 180th degree of longitude from Greenwich until it strikes the water boundary described in Article 1 of the treaty of 1867 between the United States and Russia, following that line up to Behring Straits;" third, at other times, or during the open season, only sailing vessels shall be permitted to take part in sealing operations within such area; fourth, these vessels shall be provided with a proper license, etc.; fifth, masters will record all catches in a log; sixth, the use of nets, fire-arms, or explosives are positively forbidden, though the use of shotguns in the Pacific Ocean south of Bering Sea is permissible. The regulations were to remain in force until wholly or in part abolished through common consent of the United States and Great Britain, — and "Said concurrent regulations *shall be submitted every five years to a new examination* in order to enable both governments to consider whether in the light of past experience there is occasion to make any modification thereof." The method of enforcing

these regulations was left to the respective governments, with the obligation of enacting each succeeding year such legislation as might be necessary to the proper enforcement of the award. A recommendation was also made, in view of the "critical condition to which it appears certain that the race of fur-seals is now reduced," that the two governments should agree to abstain from all killing of seals, either on sea or on land, for a period of two or three years. (This excellent suggestion, to be acted upon only by the will of the two powers, unfortunately was not accepted.)

Despite all adverse criticism, there can be no doubt that the arbitrators, in thus framing a series of regulations for the protection and preservation of the fur-seals, acted conscientiously and to the best of their knowledge. In performing their duty of establishing a code of laws for the protection of the fur-seal species, the task of the commissioners was a peculiarly difficult one, far more so indeed than had been the burden of adjudicating upon the purely legal questions involved in the controversy. The arbitrators were at once confronted and overwhelmed with a hopeless mass of variable and conflicting testimony concerning every feature of seal life, and as jurists their steps were uncertain in the provinces of natural science. They desire first and foremost to provide a system of laws that should be effective in protecting the seals from extermination, and they wished as well, in accordance with the natural impulse of a judicial body, to place the deprivations of enforced abandonment of a profitable industry equally and equitably upon the subjects of both nations, so far as proper and consistent with the primary and main objects of the regulations.

The award and regulations were accepted with becoming grace by both countries. For a time murmurs of discontent were heard from the Canadian sealers, who at first believed that the restrictions on pelagic sealing would forever ruin their industry. A certain amount of bitterness against the award and the legal conclusion of the arbitrators was also apparent for a season in many American newspapers, contributed by those who could not recover too suddenly from

their *mare clausum* convictions regarding Bering Sea, and who perhaps regarded all boards of international arbitration as but sorry exponents of justice.

(An Act of Congress was passed April 5, 1894, enforcing the award as to American citizens,) and some slight friction between the two powers was caused by the delay of the British government in effecting concurrent legislation in relation to British subjects. Orders in Council were shortly after enacted (April 18, 1894), and the sealing season of 1894, the first under the new régime, opened.

Notwithstanding the general feeling of satisfaction with the award that soon succeeded a period of doubts concerning its justice, it became apparent, at the close of the sealing season the following autumn (1894), that the regulations were inadequate, and that they had evidently been made without that accurate and scientific knowledge of seal life and conditions which the authors of the articles should have possessed. The pelagic catch was unusually and alarmingly large. Including the captures made on the Asiatic side during the closed season of May, June, and July, the number of skins taken at sea amounted altogether to about 142,000—a figure greatly in excess of any previous year's catch.

Actual operations in Bering Sea soon developed the fact that the sixty-mile inhibitive zone about the Pribyloff Islands was entirely insufficient in extent to protect the seals. The females, and occasionally the young males or bachelors, as already shown, are in the habit, during the breeding season, from May until December, of wandering away in search of food, even to a distance of 200 miles at sea; they do not, as the commissioners evidently presumed, remain on or near the shores of the islands. They are driven to make these long excursions on account of the scarcity of food near the shore, a result naturally arising from the presence of so great a number of animals subsisting entirely upon fish and other forms of marine life. On the first of August, and the end of the closed season, the sealing schooners appeared in force in the Bering Sea and reaped a rich harvest just without the protective zone of sixty miles that had been established by

the regulations about the Pribyloff Islands. A majority of the animals thus taken were females, and at that particular time every female has dependent upon her a young seal. The death of the mother invariably results in the death of the "pup" who awaits her return on shore. The unusually high mortality of the young seals on the rookeries during the season of 1894 gave silent testimony to the destructive character of pelagic sealing in Bering Sea, for having deducted from the total of dead "pups" found on the breeding-ground whose deaths had resulted from overcrowding and accident, an alarming proportion remained to indicate starvation as the principal cause. The difficulty also of enforcing the observance of a line of demarcation between protected and unprotected waters, sixty miles at sea and entirely out of sight of land, became apparent, and especially in this region of dense and almost perpetual fog.

The main objection to the regulations, however, was discovered to be in the shortness of the closed season (May 1 to July 31), during which time no seals were to be captured within the geographical limits already given. The fleet of sealing vessels ordinarily begins its operations in January, when the seals are at the southern extreme of their annual migration, and follows the herd in a northerly direction along the coast, during the early spring months. Stationing themselves in and about the passes of the Aleutian Islands, to which points the seals converge on their long swim to the Bering Sea, the hunters were enabled vastly to increase their catch. At the beginning of the closed season, the sealing captains crossed over to the Asiatic side of Bering sea and preyed upon the unprotected herds of the Commander and Robin islands, to return again about August 1 to the vicinity of the Pribyloff rookeries, where they hovered about, causing great destruction to the herd, until the approaching storms of autumn warned all sailing craft to leave those open waters. (The statistical results of the first season's operations in Bering Sea and the North Pacific furnished ample grounds for belief that the regulations had fallen far short of accomplishing the object for which they had been made.) Secretary

of the Treasury Carlisle, in answer to a House resolution, said that from the statistics of the pelagic catch of 1894, "it becomes evident that during the present season there has been an unprecedented increase over preceding years in the number of seals killed by pelagic sealers, both in American and Asiatic waters. This increase has caused an alarming decrease in the number of seals on the islands. . . . The alarming increase in the number of seals killed by the pelagic sealers . . . emphasizes the conclusion expressed in my annual report to Congress that long before the expiration of the five years, when the regulations enacted by the tribunal of arbitration are to be submitted to the respective governments for reëxamination, the fur seal will have been practically exterminated." Mr. Gresham, Secretary of State, expressed to the British Ambassador his anxiety concerning the future welfare of the seals in his letter of January 23, 1895: ". . . It would appear that there were landed in the United States and Victoria 121,143 skins, (operation of season 1894), and that the total pelagic catch, as shown by the London trade sales and careful estimates of skins transshipped in Japanese and Russian ports, amounts to about 142,000, a result unprecedented in the history of pelagic sealing. . . . This startling increase in the pelagic slaughter of both the American and Asiatic herds has convinced the President, and it is respectfully submitted cannot fail to convince Her Majesty's Government, that the regulations enacted by the Paris Tribunal have not operated to protect the seal herd from that destruction which they were designed to prevent, and that, unless a speedy change in the regulation be brought about, extermination of the herd must follow."

Further cause for American dissatisfaction in the matter was found in the alleged indifference manifested by the English Government in assuming its full share of obligation in the enforcement of the regulations. In the Act of Congress (April 5, 1894), enforcing the Paris award for that season, a section had been introduced to the effect that if any licensed sealing vessel should be found within the

waters covered by the award "having on board apparatus or implements suitable for taking seals, but forbidden then and there to be used (fire-arms), it shall be presumed that the . . . apparatus or implements . . . were used in violation of this act until it is otherwise sufficiently proved." Thus the burden of proof was placed upon all masters of American sealing craft, when arms were forbidden, to show when found in their possession, that the same had not been used for the purpose of killing seals. When enacting laws for the enforcement of a Russian vivendi in 1891, the British Government had deemed it proper to adopt this rule of evidence,¹ but in 1894, in the Orders in Council carrying into effect the Paris award as to British subjects, this important provision was omitted. In the absence of such equivalent legislation on the part of Great Britain, the American sealing captains were placed upon an unequal footing with their Canadian brethren, and manifestly at a great disadvantage when brought before the court charged with violation of the law forbidding the use of fire-arms in the capture of seals. In his letter of May 10, 1895, to Sir Julian Pauncefote, Mr. Uhl, then Acting Secretary of State, said in reference to this question of evidence:—

" . . . Experience has shown it to be almost a practical impossibility to detect a sealing vessel in the act of using firearms for this one prohibited purpose. Although the searching officer may be morally certain that firearms have been used, and may properly consider the mere presence of fire-arms on the vessel, if accompanied with bodies of seals, seal-skins, or other suspicious evidence, sufficient justification (even apart from the provisions of Section 10 of the Act of Congress of April 6, 1894, which is applicable only to American vessels) for the seizure of such a vessel, it must be apparent that in proceedings for condemnation brought in a court thousands of miles away from the place of seizure it

¹ "If a British ship is found within Bering Sea having on board thereof fishing or shooting implements or sealskins, or bodies of seals, it shall lie on the owner or master of such ship to prove that the ship was not used or employed in contravention of this Act."—(June 15, 1891, 53 and 54 Victoria, Chapter 19.)

would be almost impossible to secure conviction and forfeiture on the ground of illegal use of weapons. Furthermore, under the procedure necessarily following the seizure of a British vessel the United States officer delivers the vessel, with such witnesses and proof as he can procure, to the senior British naval officer at Unalaska. At the trial no representative of our Government is present, and the British Government must conduct the prosecution and must trust to such proofs and witnesses as the American officer could collect and furnish at the time. Under such circumstances forfeiture of the vessel could not be secured except in the clearest cases of guilt."

Suspicion also arose that England did not fully meet the United States in the desire and determination to protect the seals, because she had deemed a single war vessel sufficient for the purpose of patrolling the North Pacific and Bering Sea during the closed season of 1894, notwithstanding the fact that the Canadian fleet of sealing schooners was almost twice as large as the American fleet. The United States, on the other hand, had despatched twelve armed vessels to the scene of action, and so zealous had been their commanders in the performance of their duties, that a score or more of complaints from outraged shipowners for the too frequent, needless, and fussy overhauling of their schooners were filed in Washington.

At the close, then, of the first season's sealing operations under the regulations of the Paris award, the "Bering Sea question" again became acute. The most noticeable effect of the enforcement of a closed season upon the American side of the Pacific had been to drive the entire American and Canadian sealing fleets across the ocean during the months of May, June, and July, to take advantage of that favorable period in attacking the Asiatic herds in and about Japanese and Siberian waters. The resulting increase in the slaughter of the Asiatic herds startled Japan and Russia. They immediately expressed a desire to have the restrictive measures of the Paris award extended to their side of the Pacific, and a correspondence ensued with that end in view.

Thoroughly convinced of the inadequacy of the laws

which had been framed to protect the seals from threatened extermination, (a strong appeal was made by Secretary Gresham for English assent to a revision of the regulations. His desire was to enlarge the closed season and also to prohibit all pelagic sealing in Bering Sea.)

The statistics of the year's catch, gathered from Canadian sources, differed from the American estimates, making the total somewhat less; the English Government, seeing no immediate cause for alarm for the future welfare of the herd, were not favorably inclined to making any changes in the existing laws governing sealing operations. While still engaged, however, in discussing the situation, (the spring months advanced, the sealing fleets cleared from their winter ports, and the season of 1895 opened without any modification of the regulations.)

The statistical returns from the North Pacific and Bering Sea at the end of the season of 1895 (the second under the award), were not of a character to relieve apprehension; they served only the more firmly to convince the American Government that its fears for the future of the seal herds were well grounded, and that appeals for British consent to a modification of the regulations were reasonable and proper. Mr. Olney wrote Sir Julian Pauncefote, March 11, 1896.

. . . I desire also to call your attention to the unprecedentedly large catch of seals in Bering Sea during the past season. The total was 44,169, as compared with 31,585 during the season of 1894. This is by far the largest catch ever made in Bering Sea, and it is believed that another catch of similar size for the coming season will almost completely exterminate the fur-seal herd. I am advised that the greater portion of the seals killed at sea were females.

The total catch during the last season in the North Pacific and Bering Sea from the American herd was 56,291, as compared with total for 1894 of 61,838, the small falling off being due to the inclemency of the weather between January and May along the northwestern coast, and also to the diminution of the seal herd. . . .

In the spring of 1896 Russia again displayed some anxiety for the welfare of her own sealing industry on the Asiatic

side of Bering Sea, and broached the subject of an agreement to extend the provisions of the Paris award to her side of the Pacific Ocean. The Secretary of State eagerly seized this opportunity to gain an ally, and Mr. Bayard, the American Ambassador to Great Britain, was instructed to coöperate with and aid the Russian representative in London in his endeavors to secure England's consent to such legislation. These laudable efforts on the part of Russia were not destined to meet the success they deserved. Lord Salisbury received the overtures with indifference and proposed to send two scientific experts to the Bering Sea to make further investigations into the conditions of seal life as affected by the regulations and award, and incidentally to extend their researches to the Commander and Robin islands. Accordingly Mr. D'Arcy Thompson and Mr. Macoun, on the parts of England and Canada, proceeded to Bering Sea, to remain throughout the season of 1896. Professor David Starr Jordan, a biologist of great ability, was sent on the part of the United States to coöperate with these English scientists and to make with them a thorough and exhaustive study of the subject.

It was sincerely hoped in Washington that this scientific commission, unlike the former one of 1892, would be enabled to agree upon findings of fact, and that it might also reach harmonious conclusions in relation to proper remedial legislation. By proofs furnished through her own experts it was expected, as it was greatly desired, to convince the English Government of the necessity of a revision of the rules governing pelagic sealing, and to overcome, if possible, their stolid determination to stand for the full five years on the letter of the law regardless of consequences.

The season of 1896 opened with no changes in the regulations; the mixed Canadian and American scientific commission were at the Pribyloff Islands, and several American and British armed vessels patrolled the seas in search of violators of the sealing laws.

Professor Jordan's report appeared early the following winter, disclosing facts truly alarming to the government that had struggled so earnestly to protect the herd. After noting

carefully the gradual decrease in the size of the American herd from the beginning of pelagic sealing in 1880 to about the year 1886, then showing that since that period the steadily increasing rate of diminution of the number of seals was in a direct ratio to the increasing size of the sealing fleets, and further calling attention to the continuous and rapid decline of seal herds in the last few years, — Dr. Jordan was forced to the conclusion that “pelagic sealing . . . has been the sole cause of the continued decline of the fur-seal herds. It is at present the sole obstacle to their restoration and the sole limit of their indefinite increase. It is therefore evident that no settlement of the fur-seal question as regards either the American or Russian islands can be permanent unless it shall provide for the cessation of the indiscriminate killing of fur-seals, both on the sealing grounds and on their migrations. There can be no open season for the killing of females if the herd is to be kept intact.”

Dr. Jordan recommended that Congress should enact laws absolutely prohibiting Americans from engaging in pelagic sealing at any time or season. Such legislation, he believed, would furnish an excellent example to England, and would place the United States in a strong position for pressing her arguments against the capture of seals at sea. As a final resort, in case no understanding could be effected with Great Britain looking to the prevention of all pelagic sealing, he recommended the expediency of branding with hot irons all the female seals upon the Pribyloff Islands, thereby rendering their pelts commercially worthless, but in no manner injuring the seals. This, he thought, would protect them from the onslaughts of the pelagic hunters and enable the Pribyloff herd to maintain itself by keeping up the yearly average birth-rate.

The President was much concerned by the seriousness of the situation as depicted by Dr. Jordan. He was again moved to make strenuous efforts to induce Lord Salisbury immediately to enter upon negotiations for a revision of the existing regulations. The latter, however, would not accede to the President's wish. Professor D'Arcy Thompson, in his report soon

after made public in England, found substantially the same facts and conditions as were reported by Dr. Jordan, but he deduced therefrom a less startling conclusion. He saw no immediate cause for alarm in the continuation of pelagic sealing, but believed the killing of young males, — the “bachelors,” — on the islands, as practised by the chartered American Company, to be highly destructive to the herd and altogether a pernicious method. Basing its action upon these findings and conclusions, the British Government failed to see any urgent necessity for a modification of the regulations before the end of the stipulated five years; it declined flatly to consider the matter at that time.)

This refusal of the British Government to heed the warnings so plainly written in all the statistical reports of sealing operations since 1894, and their stubborn determination not to yield to the solicitations of the United States for a revision of the laws, caused much disappointment at Washington. Being thoroughly convinced that the Paris regulations were ineffectual, — indeed, that they utterly failed to fulfil the expressed object of their creation, — the United States received with less grace each year the refusal of Great Britain to consent to their revision. There was little consolation in the reflection that Great Britain, in thus declining to act, stood squarely upon her rights under the Paris rules. These only called upon the parties to submit the regulations “every five years to a new examination in order to enable both governments to consider in the light of past experience if there is any occasion to make any modification thereof.” England was consequently under no legal obligation whatever to reopen the question before the close of the season of 1898, and by that time it was feared in the United States there would be no seals left to consider in any light whatsoever.

Apart from her legal exemption, it was felt in Washington that Great Britain was at least under a moral obligation to consent to an immediate reëxamination of rules that were manifestly so defective. It was urged that the rules were created for a definite purpose; they had since been proven to

be not only useless, but positively harmful, in that they served to protect a nefarious practice. Hence the duty was plain to alter them as soon as possible. England's reply, to the effect that in her estimation the laws were not defective and could well await the proper time for revision, seemed to the American officials an extraordinary conclusion to draw from the facts, — a conclusion so little in accord with all reasonable deductions that it seemed unaccountable. The administration was perplexed and annoyed. With some show of feeling, the Secretary of State, Mr. Sherman, wrote to Mr. Hay, the American Ambassador in London (May 10, 1897): —

. . . On the other hand, I think I have shown that the British Government has from the beginning and continuously failed to respect the real intent and spirit of the Tribunal or the obligations imposed by it. This is shown by the refusal to extend the regulations to the Asiatic waters; by the failure to put in operation the recommendation for a suspension of the killing of the seals for three, for two, or even for one year; by the neglect to put the regulations in force until long after the first sealing season had been entered on; by the almost total evasion of the patrol duty; by the opposition to suitable measures for the enforcement of the prohibition against firearms; by the omission to enact legislation necessary to secure conviction of the guilty; and by the refusal to allow or provide for an inspection of skins in the interest of an honest observance of the regulations. . . . A course so persistently followed for the past three years has practically accomplished the commercial extermination of the fur-seals and brought to naught the patient labors and well-meant conclusions of the Tribunal of Arbitration. . . .

Congress displayed a similar feeling of resentment by considering a bill providing for the slaughter of the entire American herd on the Pribyloff Islands the following season. This very radical suggestion might be regarded as the flourish of a trump card. It probably was intended to demonstrate in a striking manner the fact that the United States could speedily end the controversy over the heads of all concerned, and it was thereby hoped to arouse the London foreign office from its attitude of indifference toward the question of the seals. The measure seems, nevertheless, to have been seri-

ously considered; it actually passed the Lower House, though it failed to reach a vote in the Senate.

However discouraging the failure to gain English consent to modify the sealing regulations for the season of 1897, a hope still lingered that some form of action might yet be taken by the two governments during the summer and autumn of 1897, which would anticipate by one year the revision of the sealing laws, and spare the diminishing herds the last or fifth season's (1898) slaughter. Mr. John W. Foster and Mr. Charles S. Hamlin, whose familiarity with the Bering Sea questions especially fitted them for the duties involved, were appointed in April, 1897,—“Seal Commissioners”; they were instructed to bring about, if possible, and at an early date, a general conference of delegates from the various powers interested, to meet in Washington for the purpose of coming to some understanding and settlement of the seal question. Russia and Japan promptly accepted the invitation to participate at such a conference, but Great Britain demurred. The foreign office granted a willing consent to a joint meeting of scientific experts to take place in the autumn, “in order by due consideration of the reports drawn up by the said experts to arrive at correct conclusions respecting the condition of the seal herd frequenting the Pribyloff Islands.” It will be remembered that Professor Thompson and Dr. Jordan were again in the field making final observations upon the conditions of seal life, and their return to their respective countries was expected in the autumn. The British Government, however, was decidedly opposed to a meeting at that time of regularly appointed diplomatic agents with plenary powers to make a treaty—as it objected to a convention of agents whose admissions would be in any manner binding upon their governments. Even at such a meeting of experts, Lord Salisbury objected to the presence of delegates from Russia or Japan, which nations he declared had no experts “in a position corresponding to that of the commissioners who have been carrying on their investigations upon the Pribyloff Islands during the past two years.” He further asserted as a sufficient reason for the exclu-

sion of their delegates from the proposed technical conference, that "neither of the two countries in question possess any direct interest in the herd frequenting those islands" (Pribyloff).

The folly of seeking a settlement of the sealing question without England's coöperation was at once recognized. The sympathy of third parties might be grateful, but what the United States really desired was England's consent to amend or alter the conditions of a bad contract. The British Government were especially unwilling to discuss the merits or faults of the regulations with Japan or Russia, for the simple reason that neither of these powers was in any manner bound by them. Great Britain very properly declined, furthermore, to confer upon an equal footing with parties outside the compact. The English Secretary for Foreign Affairs no doubt shrewdly suspected that England would be outvoted in the conferences where Russian, Japanese, and American interests would be identical and likely opposed to those of Great Britain.

Upon the failure to secure English coöperation, the first impulse of the American commissioners was to abandon the projected conferences altogether, and to recall their invitations from St. Petersburg and Tokio; but the enthusiasm which was displayed by Russia and Japan in the cordial responses of those powers to the American invitation made the withdrawal of the United States from the negotiations extremely awkward, if not impossible. It was also hoped by Mr. Foster and Mr. Hamlin that England might yield at the last moment and send a diplomatic representative to the proposed convention. This hope proved a disappointment, for the conference opened in Washington (October, 1897), with the vacant chair of the English delegate foreboding an impotent conclusion to the meetings.)

The agents of the three powers (Russia, Japan, and the United States), soon came to unanimous conclusion that under existing regulations the fur-seals inhabiting the North Pacific Ocean and Bering Sea were "threatened with extinction, and that an international agreement of all the interested

powers is necessary for their adequate protection." To make these conclusions more effective, the three powers entered into a written agreement, calling for an international conference to devise a new system of laws for the protection of the seals. The agreement also prohibited pelagic sealing, so far as their own subjects were concerned, until such prospective regulations could be brought into force. This convention, signed November 6, 1897, was of course made conditional upon the adherence of Great Britain; accordingly the instrument was at once presented to the British Government, with an urgent plea for its consent to become a party thereto.

(Without awaiting a reply from Great Britain, Congress passed a bill in December, 1897, prohibiting the killing of seals by American citizens in the North Pacific Ocean, except as they may be taken by the North American Commercial Company on the Pribyloff Islands.) The act also prohibited the importation of sealskins into the United States, whether "raw, dressed, dyed, or manufactured," except under most burdensome conditions. The object of this legislation was not only to prevent Americans from engaging in pelagic sealing, but also to discourage this practice in others by destroying the American market for the skins. Its authors no doubt hoped to force Great Britain into a treaty prohibiting pelagic sealing.

Lord Salisbury declined to give his sanction to the provisional treaty of Russia, Japan, and the United States. He wrote to Mr. Hay (December 23, 1897) ". . . in the opinion of Her Majesty's Government, no useful purpose could be served by their taking into consideration at the present moment the question of their adhesion to this convention"; and again (January 12, 1898), "It has been the wish of Her Majesty's Government that an agreement should be arrived at on the seal fishery question as well as on other matters pending between the United States and Canada, but they cannot in the present circumstances adhere to the convention, which would inflict a serious injury on Her Majesty's Canadian subjects, and which in their opinion is not required for the protection of the seals in the open sea, while it makes

no provision for restricting the destruction of the seals on the Pribilof Islands by the American Company."

The provisional treaty, therefore, found an early grave in the waste basket. In the meanwhile, however, events of seemingly greater importance toward a final settlement of the troublesome questions were transpiring in Washington. Immediately following the conclusion of the convention between the United States, Russia, and Japan, the proposed joint meeting of the English, Canadian, and American scientific experts took place (November 18, 1897). At this auspicious meeting, the scientists were enabled to agree, and the resulting joint statement of their conclusions in regard to sealing conditions promised well for future successful negotiations with Great Britain. At last there was a common basis of fact upon which the two nations could stand in their deliberations for a new set of regulations. Most important of all for American interests, these conclusions of the experts virtually sustained the American position, calling for the very remedial measures which the United States Government had been striving to bring about for four years. The commissioners agreed that there was ample evidence since the year 1884 that the fur-seal herd of the Pribyloff Islands had declined greatly in numbers, but at a varying rate from year to year; that from given data, the former yield of the islands was from three to five times as great as in 1896 and 1897; that the death among the young fur-seals was very great; that the actual count of these and of the females upon the islands confirms the belief in the diminution of the herd; that a marked decrease was to be noted in the twelve months from 1896 to 1897; that the method of driving and killing practised on the islands by the American Chartered Company calls for no criticism or objection; that pelagic sealing involves the killing of males and females alike; that the reduction of males effected on the islands causes an enhanced proportion of females to be found in the pelagic catch (62 to 84 per cent); that a large proportion of females in the pelagic catch includes not only adult females, both nursing and pregnant, but also young seals; that the polygamous habit of the animal coupled

with an equal birth-rate of the two sexes permits a large number of males to be removed with impunity from the herd ; that the killing of females far in excess of the natural yearly increment is the cause of the reduction of the herd ; that actual extermination of the herd is not threatened so long as the seals are protected on the island ; that the diminution of the herd had already reached the point when the sealing industry either at sea or on the islands had become unprofitable.

Sir Wilfred Laurier, the Canadian Premier, and Sir Louis Davies, Minister of Marine from Ottawa, happened in Washington during the course of the meetings of the seal experts. Negotiations of an informal character were then and there entered upon with them for the purpose of temporarily settling the sealing question upon the basis of the joint findings of the scientific commission, the object being to bring about as soon as possible a formal consideration of the question by the British and the United States Governments. Mr. Foster's proposal, however, for a *modus vivendi* "providing for a complete suspension of the killing of seals in all the waters of the Pacific Ocean and Bering Sea for one year from December, 1897, and for a suspension of all killing of seals on the Pribyloff Islands for the same period," was not favorably received by the Canadians. "There are difficulties in agreeing to that proposition which I fear will be found insuperable," wrote Sir Wilfred Laurier to Mr. Foster. "The fleet is preparing as usual ; the prohibition of pelagic sealing for a year would practically destroy the business for several years, because the masters, the mates, and the crews, for the larger part belonging to other parts of Canada, would leave British Columbia. The sum which would likely be demanded as compensation is far beyond what it would be possible for us to induce Parliament to vote, even if we could recommend it. . . . I am in hopes that you will not press for the immediate suspension of pelagic sealing." So these efforts toward a preliminary discussion of the regulation proved after all to be fruitless.

This last attempt, like the many others on the part of the United States to induce Great Britain to modify the Paris sealing regulations of 1893 before the end of the stipulated

five years, having failed, the Secretary of State had no alternative but to fall back upon the five-year clause in the award. (The sealing season of 1898, the fifth and last under the Paris regulations, was entered upon with no change in the laws.)

Mr. Sherman wrote to Sir Julian Pauncefote February 1, 1898: "The President has learned with deep regret that the British Government has declined to adhere to the provisional convention and has shown an indisposition to agree to any appropriate measures for the suspension of the killing of seals for the current season. He has therefore directed me to bring to your attention the provision of the award of the Paris Tribunal of 1893, which fixes the period when the regulations adopted by that tribunal should be subjected to a revision, and to ask that an arrangement be agreed upon with as little delay as possible for such revision."

The sealing season of 1898 being the fifth and last under the regulations, Great Britain at length consented to a review of the laws, in accordance with the provisions of the award. Instead, however, of conducting the negotiations directly between the two powers, it was determined by mutual agreement to carry on proceedings between Washington and Ottawa, Canada assuming the responsibility of protecting her own interests.

As an outgrowth of the visit of the Canadian Premier to Washington in the autumn of 1897, a plan was discussed for a joint Canadian and American commission whose members should be appointed by the executive branches of the two governments. It was proposed to place before this commission the numerous subjects of controversy which had arisen between the Dominion and the United States. One of the most important subjects was the sealing question, involving the adoption of a new set of regulations. The scheme was favorably received by both parties, and an agreement was signed in Washington on May 30, 1898, for the creation of the commission; its members were announced in July, and the first meetings were held in Quebec the following August. In October the commission adjourned to reassemble in Washington on November 1; sessions were then

continued, with some slight interruptions, into the early spring of 1899, when a further adjournment was made to the following summer. The meetings, however, were never resumed.

Unfortunately, the subject of pelagic sealing soon became involved in the adjustment of other important questions before the commission. An idea was at first entertained that the United States might do well to purchase from the Canadian sealers their entire outfits, and thus nullify the very pertinent argument of the Canadians that complete cessation of pelagic sealing would bring financial ruin to a number of British subjects who had already invested their capital in vessels and in the paraphernalia needed for catching seals in the open sea. This plan, however, was rejected, and another method of settlement had to be sought.

The most important question before the commission, and the one which presented the most stubborn difficulties, was that of commercial reciprocity. The Canadian agents were quick to seize upon the opportunity of securing a good bargain through the eagerness of the United States to secure laws absolutely prohibiting pelagic sealing. Accordingly, they valued their "concession" in this respect the more highly, and demanded in return what appeared to the Americans to be an unreasonably large price in the shape of a free list of American importations from Canada. The more this question was discussed, the more hopeless of solution it appeared to be. Finally the commission encountered an unsurmountable obstacle to all negotiations in the Alaska boundary dispute; when adjournment took place (February, 1899), the Bering Sea question — as, indeed, all the other issues before the board — were left entirely unsettled.

It will be recalled that one of the points of disagreement between the two powers in framing the Washington convention of February 29, 1892, had been in the matter of British claims against the United States for the seizure and condemnation of Canadian vessels in Bering Sea. In 1886-87, when the evils of pelagic sealing were first noticed by the United States Government, a number of vessels hailing from

British Columbian ports were seized, through orders from Washington, by American revenue cutters, and afterward condemned in libel proceedings at Sitka. These captures had been made in what their masters maintained to be the open high seas, — *i.e.* outside the ordinary three-mile limit of marine jurisdiction. The case of the sealing schooner *W. P. Sayward* was appealed by her owners, and eventually reached the United States Supreme Court, where, as a test case for all the other vessels similarly libelled, it was expected to obtain a definition of the term, “high seas.” The case was dismissed in Washington upon a technicality, and no decision upon its merits was rendered. The owners of the condemned vessels were, nevertheless, determined to obtain redress, and the matter of damages for wrongful seizure and confiscation by the United States authorities having been taken up by the British Government, the question drifted into diplomatic channels and became a part of the greater “Bering Sea controversy.”

When it was finally agreed to arbitrate the whole question, the claims of these Canadian shipowners naturally came forward for recognition by the tribunal. In the convention of February 29, 1892, with Great Britain, — in which the jurisdictional rights of the United States in Bering Sea waters were submitted to a tribunal of arbitration, — it was stipulated that either party might submit to the arbitrators any question of fact “involved in said claims and ask for a finding thereon.” The question of the amount of liability of either government on the facts found was, however, left subject to further negotiations.

The British agents accordingly presented to the arbitrators at Paris all the facts in connection with the confiscation by the United States of the Canadian sealing vessels. These facts, which gave the exact locality of each vessel when captured, its distance from shore, the number of skins on board, etc., were agreed to by the United States agents, and the arbitrators unanimously found the same to be true. With the facts in each particular case thus accepted by both the British and the American agents, and the jurisdiction of

the United States in Bering Sea having been limited by decision of the tribunal to the ordinary zone of territorial waters, the seizure of these vessels outside of such territorial waters stood acknowledged as illegal; the United States could therefore no longer evade the liability for damages to their owners. The only question left to decide was the amount of compensation due.

The following year (1894), the Secretary of State, Mr. Gresham, signed an agreement with the Canadian authorities to pay to them the lump sum of \$425,000 in satisfaction of these claims, but Congress refused to appropriate the money, notwithstanding the fact that the full British claim amounted to about \$850,000.

During 1895-96 efforts were continued to fix the amount of compensation due satisfactorily to both sides. A treaty between Great Britain and the United States was finally signed in February of the latter year, providing for the appointment of a tribunal to adjudicate upon all these claims. It was to be composed of two members,—a Canadian and an American, and, in case of disagreement, a third and neutral member was to be called in as umpire. William L. Putnam of Portland, Maine, Judge of the First Judicial Circuit of the United States, was chosen by the President as commissioner on the part of the United States, and George E. King, a Justice of the Supreme Court of Canada, was likewise selected at Ottawa.

The commission met in Victoria, B. C., and later in San Francisco, where testimony was received orally as in open court. No umpire was found necessary, and in December, 1897, the commissioners submitted their joint report to their respective governments, their award being final. The total amount of damages to be paid by the United States to the injured shipowners was placed at \$473,151.26. In finding this sum, the commissioners included not only the value of the vessels, their outfits and the skins confiscated, but also the value of the probable catch which would have been made had not the vessels been prevented from continuing their operations throughout the sealing season. Each vessel

estimated a prospective catch of 3500 to 5000 skins at a value from \$3.50 to \$12.50 each. On June 14, 1898, a joint resolution of Congress appropriated the sum of \$473,151.26 to pay the award, and two days later, the Assistant Secretary of State, Judge Day, delivered a check upon the Treasury to Sir Julian Pauncefote. Thus closed in amity the question of the Bering Sea claims.

Deep regret was felt that the Joint High Commission had been unable to frame a new set of regulations. Under the five years' regulations of the Paris award, the seals were to a certain extent protected, although that protection was admittedly inadequate to preserve the herd; but since the termination of those laws and the failure of the Canadian commission to create new ones, the seals have been left wholly and absolutely without protection while in the sea; the same distressing conditions which existed in Bering Sea before 1894 prevail once more. (During the season of 1899 and the season of 1900 pelagic sealing was and is to-day free to all without let or hindrance.)

If the seals were in danger of extermination, even under the protecting laws of the Paris award, as is generally believed to have been the case, that danger must now be vastly increased since all restrictions have been removed. Now, still further to aggravate the situation, while Canadian vessels are accorded perfect freedom to kill seals in Bering Sea waters, American vessels are barred from all participation in pelagic sealing. The laws to this effect passed by Congress in the winter of 1897 remain in force, and thus, in the final slaughter which is promised, the Canadians will reap all the profits.

The herd had become so diminished in numbers in 1898 that the industry for that year was quite unprofitable. The Canadian sealing fleet of 1899¹ was smaller than that of the previous season, but considering the depletion of the herd, an alarmingly large catch of seals was made.² A larger fleet sailed last year,³ and the outlook for the present season is a

¹ Twenty-six British vessels.

² 35,346; 55% females.

³ 33 British vessels. Catch 35,191, with a large excess of females.

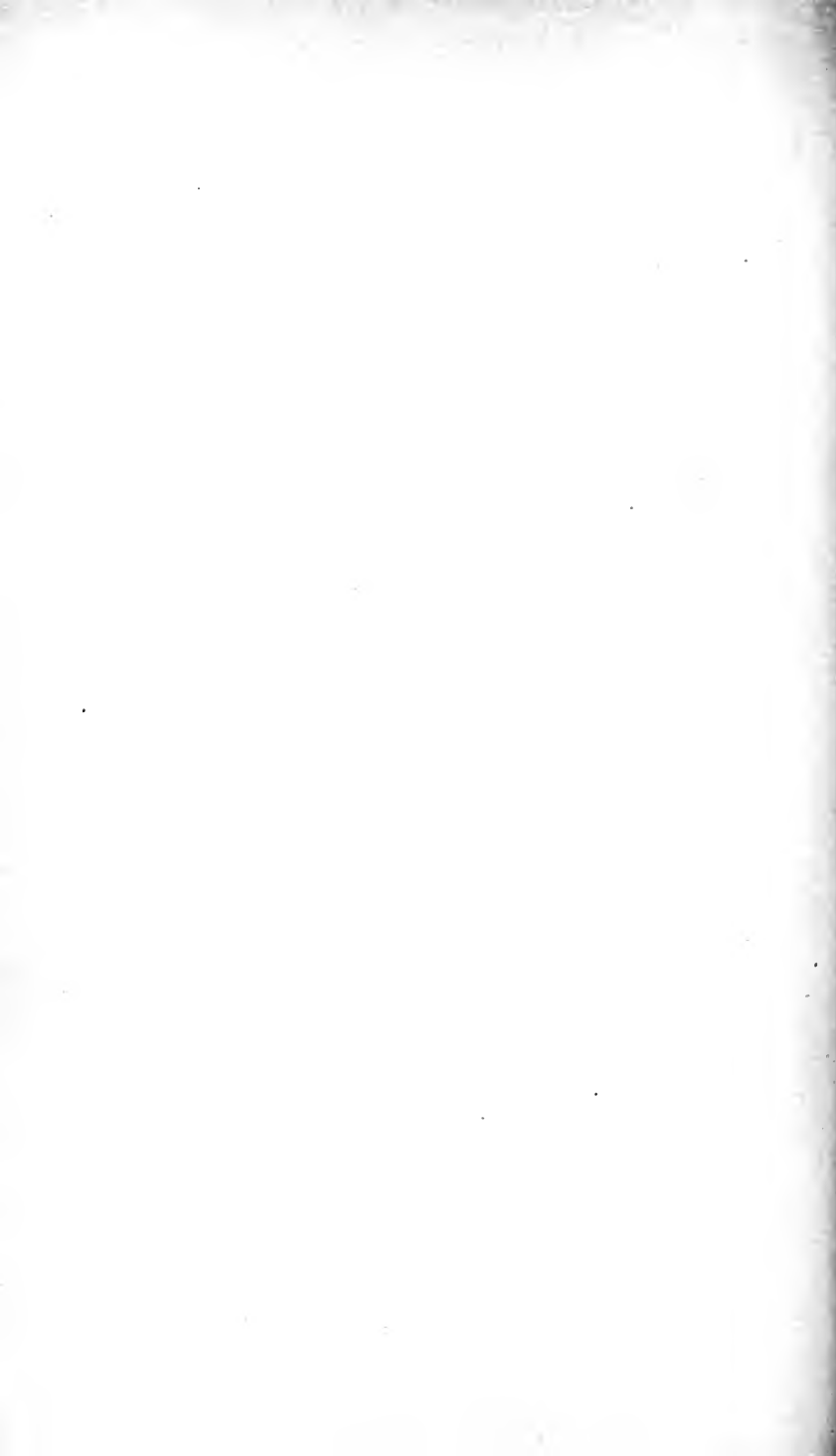
discouraging one. Apparently nothing can be done to save the animals from total extinction. Could the industry be properly regulated, there is said to be no doubt that it might flourish for all time. But the seals belong to no one when outside the ordinary limits of marine jurisdiction, and the high seas must be free to all. There is no legal remedy. Possibly a balance will be found, and the yearly diminution of seals will cause a corresponding falling off of hunters, as pelagic operations become less remunerative. But the chances are strongly in favor of a total destruction of the herd within a few years, unless some immediate understanding can be had with Great Britain to check the onslaught.

The American company on the Pribyloff Islands took in 1899 and 1900, 16,812 and 22,470 skins respectively, the increase in 1900 indicating a desire to gain as much as possible from a dying industry.

In consequence of the unequal laws governing their operations, American pelagic sealing vessels have been driven from the field. Danger of further conflicts in Bering Sea is lessened, but the unjust conditions which are imposed upon the Americans remain as a sequel to the closing of a diplomatic incident which from first to last has been disastrous to American interests.

II

THE INTEROCEANIC CANAL PROBLEM



II

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THE problem of interoceanic communication at some Central American point is by no means a new one, as it finds its origin in the very causes that led to the discovery of America. The repeated voyages of Columbus were for the purpose of finding an open waterway to the East Indies. The early Spanish navigators explored every bay and cove and ascended every river of Central and South America, in the hope of discovering a passage through which their vessels might reach those lands of boundless wealth of which Marco Polo had given account. Their object was to find a short and direct route "from Cadiz to Cathay." Since the days of the earliest explorers, the history of Central America has been closely associated with this question of an interoceanic waterway, — first, to discover the natural one, if it existed, and in its absence, to construct an artificial one.

A wagon road across the isthmus from Porto Bello to Panama was constructed early in the sixteenth century for transportation to and from the "El Dorado" that Pizarro had discovered in Peru; indeed, as early as 1530, Pedrarias Davila, governor of Nicaragua, wishing to divert the transit trade of Peru from Panama to his own flourishing colony, conceived the plan of constructing short canals about the rapids of the San Juan River, in order to make a waterway between the "North" and "South" seas. The possibilities and advantages of this open water connection between the great oceans was also thoroughly appreciated by the Spanish home authorities, for Charles V of Spain, in 1536, ordered an exploration of the Chagres River (at Colon) for the purpose of ascertaining whether a ship canal could be practically substituted for the wagon road; and Philip II, in

1561, sent his engineer to explore Nicaragua for the same purpose.

From the earliest days of Spanish discovery and settlement in Central America, down to the present moment, canal schemes have originated, flourished, and died. Although never quite abandoned, they have at various times been laid aside, — as during the times of struggle between Spain and the English freebooters in the West Indies, times when pirates roamed the seas and infested the lagoons of the mainland, and marauding expeditions laid waste the towns along these coasts. But whenever a lull in hostilities occurred, Spanish interest in the great canal was sure to spring up anew, to be followed by further investigations and new projects. These earlier efforts, however, amounted to very little, practically.

With the decline of Spanish power and influence, other nations became interested in this fascinating canal problem, notably Holland, Belgium, France, England, and finally the United States. Volumes of maps and descriptions of favored routes have been filed away in government archives and in the records of private companies, among which are great numbers of extravagant statements concerning the wonderful topographical advantages offered by various favored sections, along with astonishingly cheap calculations for canal construction.

It would be useless to the purpose of this review to examine all the numerous schemes for the building of isthmian canals from the beginning of the sixteenth century. Suffice it to say, they furnish a history of failure and blighted hopes. It might not be uninteresting, however, before proceeding to the political and diplomatic history of the United States in connection with this canal problem, to make brief reference to some of the more prominent isthmian canal schemes which have been projected during the present century.

No less than eight routes of supposed practicability have claimed the attention and approval of engineers and those interested in the construction of a waterway across Central America. The six important ones are: —

I. *The Tehuantepec Route.* The isthmus of Tehuantepec forms the narrowest portion of Mexico, it being about 150 miles across, from ocean to ocean. Cortez established a line of transit at this point, which was maintained for a number of years; but it subsequently yielded in favor to the admitted superiority of the Nicaragua route. As early as 1550, Galveo, a Portuguese navigator, declared the Tehuantepec route a feasible one, and urged Philip of Spain to consider it. No further notice seems to have been taken of it until about 1770, when Charles III of Spain ordered the viceroy of Mexico to locate a site for a canal across this isthmus. The result of the viceroy's survey was discouraging, and the plan thereafter was abandoned as unfeasible.

II. *The Nicaragua Route.* This leads from the mouth of the San Juan River to Lake Nicaragua, thence by several proposed lines (preferably by way of Brito) to the Pacific Ocean, a distance of $169\frac{1}{2}$ miles. Of all possible routes, this seems to have claimed the most favorable attention of American engineers. It is said to possess the best conditions for the location of a lock-system canal, chief of which is the existence of Lake Nicaragua, which, with portions of its outlet (the San Juan River), provides many miles of natural waterway, and an abundant and constant supply of water for the locks. The climatic conditions of this locality are also excellent. It is not unlikely that Philip of Spain would have here attempted the work of canal construction in 1567, which, in those days, would have been a labor of Hercules, had not political complications at home diverted his attention from his ambition across the sea.

La Condamine, the eminent French scientist, who, with a corps of able *ingénieurs*, was sent by his government (in 1735) to South America for the purpose of conducting certain astronomical observations, made an examination of Lake Nicaragua and its outlet. He became much impressed with the many advantages this route offered for the construction of a canal, and so reported to his government, but France was not then ready to undertake so great a project. England seems always to have recognized the value of this route,

and for two centuries persistently sought and held territory near the mouth of the San Juan River, while American interest has always been especially alive to its feasibility and importance.

III. *The Panama Route* from Colon, or Aspinwall, on the Caribbean Sea, to Panama on the Pacific.

IV. *The San Blas Route* from the Harbor of San Blas to the mouth of the Rio Chepo on the Pacific.

V. *The Caledonian Route*, across the isthmus of Darien, from Caledonian Bay on the Atlantic side to the Gulf of San Miguel. This is the narrowest point of land separating the great oceans to be found between the arctic circle and Cape Horn.

To the Panama Route nature has contributed much toward the possibility of constructing the work. There is here a depression in the mountain range, the great Cordillera of the Americas, furnishing a pass only 284 feet above the tide. The distance from sea to sea is scarcely fifty miles, and there are suitable harbors on either side. The advantages of a canal operated throughout upon sea levels, thus avoiding the complications and inconveniences of locks, are so very great that one turns away from Panama with reluctance. One is inclined to hope that modern scientific ingenuity may yet find means to surmount the obstacles presented by the floods of the Chagres River, the yielding sands and soils of the isthmus, and the deadly climate of Colon and Panama. The other two routes near Panama were once supposed to be practicable, but careful surveys by more accurate or less partial engineers have demonstrated the fact that the mountain ranges crossing them present almost insurmountable barriers against the construction of a canal.

VI. *The Atrato Route*. The Atrato River has its rise in Colombia, on the eastern slope of the Andes, and flows north about two hundred miles, close to the foot of this great range of mountains, finally debouching into the Gulf of Darien. So fearful was Philip II of Spain that the Atrato River might furnish to his enemies the coveted opening to the Pacific, and thereby destroy the profits of his carrying trade by wagon road

across the Panama route to Peru, that he issued, in 1542, a royal order, imposing the penalty of death upon any one who should attempt to enter that river. A veil of profound mystery long enveloped this region, and for upward of two centuries tradition gilded the unknown with its usual magnificence. This most alluring river of the Atrato is separated from the Pacific Ocean, along its entire course, by a mere strip of land. This land, however, is the Cordillera, or summit of the Andes, and although it is furrowed on the eastern side by numerous streams tributary to the Atrato, the explorer has always been confronted, at the sources of these tributaries, by towering walls and impassable heights. This, therefore, has been a region of brilliant promise and of sad disappointment.

Each of these routes possesses its own good and bad features, its own peculiar advantages and disadvantages. Careful surveys of them all, made in the light of modern scientific methods, together with comparisons of their orographic, hydrographic, and climatic conditions have resulted substantially in the rejection of all except two from the list of practical possibilities. These two are the Panama and Nicaragua routes.

The beginning of the nineteenth century found Alexander von Humboldt making a critical examination of the various Central American routes. He discussed them at length in his "Personal Narrative of Travels," giving particular emphasis to the superior advantages offered by the Nicaragua route. Humboldt contributed to the world's knowledge the first valuable information, from a scientific point of view, concerning this route; his conclusions so inspired the Spanish Cortez that it passed a decree for the immediate construction of a canal through Central America. Spain's power and influence in the Western Hemisphere, however, had by this time become far too feeble to carry out any such undertaking, and this last spasmodic effort to awaken her spirit of achievement in the New World expired almost with its conception.

By the year 1824, all of the Spanish-American colonies had secured their political freedom from Spain, and had

established themselves as free and independent republics, and those whose geographical position and topography warranted them in so doing stood ready to enter into treaty relations with any foreign power thought to be able and willing to construct an interoceanic canal within their borders. The United States had, at this time, reached a point in its national existence when the entire attention of its government was no longer confined to matters purely internal and domestic. For the first time it was then ready to consider the subject of connecting the oceans at some favorable point between North and South America. The Panama Congress, which had been called to meet in June, 1826, had for one of its objects the discussion of this canal scheme, and the attention of Mr. Clay, the American Secretary of State, was specially directed to the importance of the question. Perhaps American activity was somewhat stimulated by the fact that at the same time British influence was at work in Nicaragua, seeking concessions for canal-building purposes.

A company was quickly formed in New York, called the "Central American and United States Atlantic and Pacific Canal Company." Encouraged by an Act of Congress, this company set earnestly to work to present its bids for obtaining a concession from Nicaragua before the English company could anticipate it and get firmly located in the field. Succeeding in obtaining its concession, the American company signed a contract in 1826, with the Government of the Central American Confederation, to construct a canal through Nicaragua "for vessels of the largest burden possible." Estimates of cost did not exceed \$5,000,000. Great interest was excited in the United States and in Central America, but owing to a lack of funds necessary to the undertaking of so very large an enterprise, this, the first American effort to construct an isthmian canal, served but to add one more example to the long record of failures and disappointments.

In 1830 the king of Holland, at the head of a Dutch canal company, secured from Nicaragua an exceedingly liberal concession, so liberal, indeed, that it called from President Jackson a strongly worded protest, predicated chiefly on those

political principles so recently enunciated in the celebrated "Monroe Doctrine."

Following the failure of the Dutch company, which was immediate and complete, a number of less pretentious efforts on the part of American, English, and French companies appear and disappear in rapid succession in both Nicaragua and Panama. The interest of Louis Napoleon, then a prisoner at Ham, seems to have been keenly aroused to the importance of the question. He organized a company known as "La Canal Napoleone de Nicaragua," and in 1846 published a pamphlet advocating the Nicaragua route, which remains to-day as a sort of exclamation mark in the history of the canal. Its publication aroused new interest in Europe, and at the time brought to its author much reputation for practical statesmanship. Napoleon was forced, however, to bide his time; but his opportunity he supposed had come at last, when from his imperial throne in Paris he watched with satisfaction the gathering of the war clouds in the United States. When the storm of civil strife had threatened the disruption of the Union, he undertook the task of overthrowing the republican institutions of Mexico and establishing in their place a government dependent on France, which would be at the same time an ally, offensive and defensive, of the Confederate States of America. In this delusive dream his fancy had sketched the dismemberment of the American Republic, the aggrandizement of imperial France, and a final subjection of Western interests to the domination and control of Europe. The overthrow of the Southern revolt prevented the possibility of success, and his splendid reverie was forever dispelled by the fortunes of war at Sedan. The building of a French canal through Nicaragua was probably but a small part of Napoleon's great Western project.

About the year 1850 considerable enthusiasm was aroused in Europe, and especially in France, over the report of certain explorers in the lower isthmus. At one time there were three parties of engineers (American, English, and French) struggling in the pestilential jungles and morasses below Panama in search of reported but imaginary depressions in

the mountains. The English and American surveyors left the region in disgust, but the French company, encouraged by the Société de L'Étude of Paris, and by popular enthusiasm at home, continued to make investigations along the lines of the Caledonian and San Blas routes. Between 1850 and 1855, a wealthy American, Mr. Kelly, who was charmed by the mysteries of the Atrato River, spent a fortune in making a reconnaissance of this region. The result of this active exploration of the lower isthmus during the years 1850-55 was to place the Atrato, the Caledonian, and the San Blas routes outside the limits of practical canal possibilities.

The "Central American and United States Atlantic and Pacific Canal Company," launched with flying colors, and doomed to disappointment, was succeeded twenty-two years later by "The American Atlantic and Pacific Ship Canal Company," which was organized in New York, with Cornelius Vanderbilt at its head. It secured from Nicaragua (September, 1849) a favorable concession to build a canal from any point in the state on the Atlantic coast to some Pacific point, together with a liberal land grant and a monopoly of steam navigation on the rivers and lakes of Nicaragua. With so promising a beginning the company despatched its engineer, Colonel Childs, to make accurate and complete surveys of the route. The Childs survey was the first really technical examination made of the Nicaragua route; and the line adopted by him in 1850 has been practically approved and accepted by engineers in all subsequent surveys. Preparatory to embarking upon the great work of building a complete waterway, the company operated a line of small steamers on the river San Juan and Lake Nicaragua, continuing the transit by stage coaches from the lake to the Pacific Ocean. The profits of this preliminary enterprise were exceedingly large during the pioneer rush to the gold fields of California. Although the company for some years continued successfully to operate this "temporary line" of transit even after the construction of the Panama Railroad (completed in 1855), it accomplished comparatively nothing toward the declared object and purpose of its creation.

A series of diplomatic difficulties and entanglements then arose between the United States and Great Britain touching their respective rights in Nicaragua. These difficulties, together with political conflicts in the United States, operated to decrease public interest in the great undertaking, and so delayed and crippled the American promoters, that the Nicaraguan Congress lost entire confidence in their ability to carry out the company's purpose. It finally (May, 1858) declared a forfeiture of the franchises of the American company and transferred similar rights to one Felix Belly of Paris. The Belly company, however, was unable to secure the funds necessary, even to begin the work, and its concession accordingly lapsed. Out of this apparently hopeless confusion, the American Company succeeded in effecting a reorganization under the name of the "Central American Transit Company," and as such continued to claim and exercise the rights and franchises of the former company until 1869, when it sold and transferred the same to an Italian company. After 1860 public interest in the project seems to have wholly subsided in the United States until the year 1872, when President Grant revived the subject by urging that the canal be built by the government as a national undertaking. In pursuance of his suggestions, he appointed an "Interoceanic Canal Commission," consisting of the chief engineer of the army, A. A. Humphreys, the superintendent of the coast survey, C. P. Patterson, and the chief of the bureau of navigation, Admiral Ammen, under whose direction a series of exhaustive surveys of the Tehuantepec, Nicaragua, Panama, San Blas, and Atrato routes was made. The report of the commission favored the Nicaragua route as formerly surveyed by Colonel Childs, and steps were taken to organize a company for the management of the work.

From the more modest operations of the American promoters in Nicaragua one must turn for a moment to Panama, where, by this time, the De Lesseps scheme was at the height of its activity. Ferdinand de Lesseps, a French engineer, had won the confidence and admiration of the world by his splendid success in constructing the Suez Canal. He had revived the old scheme of a tide-water canal from Colon to Panama, and

having organized a French company, and also secured liberal franchises from the Colombian States, he took in hand the task of raising the necessary funds for its construction. Through the aid of the Paris Geographical Society, he caused a series of surveys to be made in the lower isthmus, all of which were subsequently found to have been absurdly superficial; then, in order to decide upon the best route and to stamp the approval of the world upon his choice of it, he invited the political authorities of Europe and America, as well as the presidents of many geographic and scientific societies to send delegates to an "International Scientific Congress." By extraordinary cleverness and ingenuity De Lesseps carried every point in this convention, which finally decided that a tide-level canal could be built at Panama for \$140,000,000.

Hostile criticism of the undertaking in the United States, foreshadowing a protest on its part against exclusive French control of the work, finally brought De Lesseps to Washington for the purpose of overcoming threatened American opposition. He managed the "preparatory arrangements" for his grand scheme with marked ability, and the enthusiastic and readily excited French people struggled to obtain shares in his company with as much zeal as they had once before manifested in the purchase of stock in the Mississippi scheme of John Law. Work was begun at Aspinwall in 1881, and was continued for nearly seven years, when it was found that the canal, though not half finished, had cost upward of \$260,000,000. Further investigation disclosed the hopeless insolvency of the company. The scandals connected with the enterprise were so great as to compel examination by the legislative authorities of France, resulting in the discovery of corruption and fraud in its management, which fairly astounded the world. Many millions had been spent in buying the favor or silence of the press and in purchasing the support of legislators. The names of many prominent officials of highest rank and position in France were sadly smirched in the process of the investigation. The original intentions of the promoters were, without doubt, honorable; but before the work had progressed

a year, it became evident to those in charge of the operations on the isthmus that the difficulties to be overcome had been greatly underestimated. The soft, yielding character of the soil, the heavy rains and floods, the miasmatic climate, all added new complications which vastly increased the labor and expense of the undertaking. To attain success it became necessary greatly to enlarge the capital of the company, and to accomplish this object it became equally necessary to encourage public enthusiasm by frequent and glowing reports of the company's successful progress.

When an utterly hopeless future confronted the officers of the company, when but a breath was needed to burst the expanding bubble, the promoters still maintained their struggle to suppress the truth. At last the expense became too great. The crash came, carrying down many thousands of French investors who had staked all upon the reputation and promises of De Lesseps. Even to-day the great dredges and massive machinery employed in this gigantic undertaking, and representing many millions of cost, lie half buried in earth, corroded with rust, and draped in nature's veil of tropical foliage. They lie at Colon like fallen monuments to the greatest failure of the century. This is, of all, the most melancholy event in the somewhat tragic history of isthmian canal projects.

For a brief time financial success marked the operation of the American Canal Company, in so far only as it undertook to maintain a trans-isthmian overland route. In actual progress toward the building of the canal, the records of this, as of all other canal companies, tell the old story of failure.

Just after the conclusion of the Frelinghuysen-Zavalla treaty with Nicaragua (1884), a number of prominent business men, encouraged by the liberal concessions promised to the United States in that treaty, met in New York and organized the "Provisional Canal Association." It was the object of the energetic promoters of this association to form a company whose distinguished personnel, whose financial guarantees, whose advantages in the way of concessions, and whose command of engineering talent would make failure

an impossibility. The association was neither chartered nor incorporated; it had no connection with the government; it was simply a private syndicate. Between two and three million dollars were quickly subscribed, and Mr. Menocal was sent to Nicaragua to secure the necessary concessions. With an ample bonus paid in advance to the Nicaraguan authorities, he met with no difficulty in obtaining for his clients (April 24, 1887) an exclusive right to build and afterward to operate a canal for ninety-nine years. The state bound itself "not to make any subsequent concession for the opening of a canal between the two oceans during the term of the present concession," and the association pledged itself to expend a certain amount within a specified time and to complete the work in ten years.

* Upon Mr. Menocal's return to the United States the syndicate caused a "Nicaraguan Canal Construction Company" to be incorporated under the laws of Colorado with a nominal capital of \$12,000,000. As an adjunct to the "Association" and in conformity with the terms of their concession, the Construction Company at once set about making necessary final surveys and eliminating the technical uncertainties that still stood in the way of the commencement of actual construction. Mr. Menocal led this engineering expedition. The survey covered a period of nearly three years, and was a most exhaustive scientific investigation of the route. Throughout the country considerable interest began to attach to the progress of Mr. Menocal's investigations, and the Canal Association had the heartiest good will of all for its future success; in fact, a general belief began to manifest itself that the company should have the protection, as well as the dignity, of a national charter. Under stress of sudden popular enthusiasm, both Houses of Congress assented to the proposition to charter the association, and very soon after the introduction of the measure into the Senate the company received its articles of incorporation and was christened the "Maritime Canal Company of Nicaragua" (February 20, 1889).

The company was at once organized with \$10,000,000 of

stock ; new contracts were made with the Canal Construction Company, and the digging of the Nicaragua Canal actually began. Hon. Warner Miller of New York was made president of the Construction Company. Having raised funds sufficient to undertake his contract with the Maritime Canal Company, he pressed the work in Nicaragua with great energy. Within one year the stipulated \$2,000,000 had been expended to the entire satisfaction of an exacting government in Nicaragua. In three years nearly five millions had been spent. Seemingly insurmountable difficulties were overcome in building a line of railroad thirteen miles from the coast to the foot-hills across the lagoon, through the tangled masses of swampy jungle that intervened. A canal two miles long was dug, breakwaters at Greytown were constructed, the harbor was dredged, and altogether satisfactory progress was being made when the financial panic of 1893 compelled the Construction Company to suspend all operations. Despite all efforts to stem the tide of adverse fortune, it soon after fell into the hands of a receiver.

The officers of the Maritime Canal Company constantly exerted themselves to keep fresh the lively public interest which had been exhibited in their project from the beginning, and their efforts were rewarded by many demonstrations of public enthusiasm. In January, 1891, the Senate Committee on Foreign Relations framed a bill authorizing the government to guarantee an issue of one hundred millions of the Maritime Canal Company's bonds and to hold as a pledge a controlling interest in the stock of the company. Although the measure, which was warmly supported by Senators Sherman and Morgan, did not become law, this incident of the committee room served to demonstrate the trend of public thought upon the matter of governmental control of any Central American ship canal that should be built.

There was one reason in particular why the idea of governmental aid to the great undertaking continued to grow in popularity. The tragic failure of the Panama Company had made a strong impression upon the minds of investors.

That lamentable event had furnished the best proof of the utter futility of any private corporation undertaking the gigantic task of piercing the Central American Cordillera; none but a Hercules should attempt a labor of Hercules. Aside from reasons relating to the physical side of the question, the very nature of the project itself appeared to invest it with a national rather than with a private character. The difficulties, political and economic, as well as technical, which surrounded the enterprise, removed all doubt that the construction of the canal should be under the auspices and protection of the United States Government. The use of the canal when completed would necessarily be most intimately connected with vital interests of the nation. Would it then be safe to subject to the chances of private ownership an undertaking which involved interests so complex and important? Public opinion then rapidly shaped itself into a conviction that the canal should be built by the government in order that it might at last be controlled by the government.

Further reasons induced the stockholders themselves persistently to seek governmental aid for their project. Periodic political disturbances in Central America had caused the Maritime Canal Company considerable embarrassment. A genuine respect for any body of private citizens operating within her borders could scarcely be expected from Nicaragua's turbulent political factions. At any moment Central America was likely to go to war. Indeed, the efforts of the company to prosecute the work at Greytown had been hampered from the outset by quarrels between Nicaragua and Costa Rica. The news of the annoying delays forced upon the company by these frequent political disturbances reached the United States, and deterred many who were otherwise most enthusiastic in the cause of the canal from risking capital in its development. Even while active work on the part of the contractors was progressing in Nicaragua, the lack of sufficient funds greatly handicapped the Maritime Canal Company's operations. In this awkward predicament the promoters were in doubt as to the proper course to be

pursued. It seemed doubtful whether it were better to open their subscription books to foreign capital or to make another appeal for Congressional aid. The first course carried the objectionable feature of permitting foreign influence to enter into what they wished should be a purely American scheme ; and the second course at that time promised but little hope of success. As a last resort, however, great pressure was again brought to bear upon Congress to guarantee the company's bonds and thus secure the stockholders from possible loss. In furtherance of this idea, a convention held at New Orleans in November, 1892, in which six hundred delegates assembled, some from every state and territory in the Union, unanimously passed resolutions calling upon Congress to lend its aid to the construction of the Nicaragua Canal. These representations of public will resulted in the reintroduction of a bill in the Senate (December 23, 1892), authorizing a governmental guarantee of the company's bonds to the extent of \$100,000,000 providing that in consideration of such guarantee the government should receive in absolute ownership \$80,500,000 of the capital stock.

The passage of this bill would most assuredly have placed the United States Government in the position of owner of the canal ; but there were diplomatic considerations that prevented the United States from thus suddenly converting the company's project into a national undertaking. These considerations must be examined later, but for the present, suffice it to say, the bill never passed beyond a stage of lively and animated debate, and the Maritime Canal Company therefore gained nothing by its call upon Congress. New issues of the company's bonds were made, but the financial panic of 1893, which wrecked the Construction Company, so increased the timidity and caution of investors as to render the success of the new bond issue impossible. The Maritime Canal Company became substantially stranded. The next year another desperate attempt was made to secure legislation in Congress that should place the company upon a firmer financial basis. On January 22, 1894, the old guarantee bill of 1892 was reintroduced into the Senate with some modifications. By

this measure, governmental guarantee of \$70,000,000 of the company's bonds was called for and national ownership of \$70,000,000 of stock, and the Secretary of the Treasury was authorized to control the construction of the work. Thus the idea of absolute governmental ownership of the canal, together with a governmental responsibility for its construction, was contemplated by Congress. The measure bid defiance to treaty stipulations of the United States, which should have acted as an estoppel to any such legislation. The bill was lost in the House, notwithstanding the fact that a great majority in both branches of Congress strongly favored government ownership and control of the Nicaraguan Canal.

In 1895 Congress again took action in the same direction; but, as before, the House refused to accept the measure which the Senate had been willing to adopt. However, on March 2, 1895, Congress authorized the appointment of a commission of three engineers for the purpose of reporting on the feasibility, permanence, and final cost of the company's project; \$20,000 were appropriated for the purpose, and the company added generously to the amount of the appropriation to help defray the costs of the commission. The creation of this commission was generally accepted as evidencing an intention of Congress, sooner or later, to extend its protection over the Maritime Canal Company, by the absorption of its capital, and ultimately to secure full control of the work. The same field had been surveyed and resurveyed many times by competent engineers, and further scientific investigation along the well-known route was hardly necessary; however, the commission (under General Ludlow) entered upon the task with the seeming approval of the country.

The commission reported in November, 1895, to the effect that the company's project for a ship canal in Nicaragua was perfectly feasible, save for some detail in the company's plans to which the commission duly excepted. The report recommended still further investigation in order to obtain certain additional data which the engineers deemed essential for a final conclusion and a correct estimate of cost.

The opening of the year 1896 found the Maritime Canal Company almost exhausted in its struggle against adverse fate. Its adjunct, the Canal Company, as already noted, had foundered in the financial storm of 1893, leaving the results of its labors in Nicaragua exposed to the destructive influences of merciless floods and to the devouring growth of tropical vegetation. A new construction company had been organized the previous year (March, 1895), and chartered in Vermont, to resume where the old canal company left off. Unfortunately, its available assets were quite dissipated in liquidating the debts of the old company, and none were left with which to dig canals. All the efforts of the parent company to obtain funds had failed; every attempt to secure governmental aid had failed as well; and six of the ten years within which the canal should be completed, under its concession from Nicaragua, had slipped away. The Ludlow Commission had reported that further investigation into the technical features of the undertaking was necessary, and it was therefore quite likely that Congress would do nothing toward rescuing the company until such final investigation could be made. The outlook for the company was gloomy.

Notwithstanding these unfavorable conditions, the friends of the company in the Senate and House continued to exert themselves in its behalf. With recommendations for immediate action, the House Interstate and Foreign Commerce Committee reported a bill calling for such national aid to the enterprise as might seem requisite to enable the company to obtain funds necessary to complete the work in Nicaragua already commenced. The measure contemplated the practical conversion of the company into a governmental concern. The entire capital (a new issue of bonds being authorized) was to be retained by the United States, save the sum of \$7,000,000, which was to be left in the hands of the company's original stockholders, to reimburse them for funds actually expended in Nicaragua. This bill passed through the various stages of committee-room debate, and finally took its place upon the Senate calendar, though too late for action during that term.

The measure was not again called up until January 18, 1897, when it became the special order of business in the Senate for nearly a month. A vast amount of testimony, from many sources, had been taken by the Senate committee to demonstrate the necessities for passing the bill, and voluminous documentary reports accompanied the Senate committee's recommendation. But behind the necessities of the case there existed in the minds of many of the Senators an uncomfortable feeling that the passage of the bill might involve a neglect of those moral requirements placed upon the nation by its treaty stipulations. Many advocates of governmental control of the canal fully believed that the Clayton-Bulwer treaty with England, binding the United States never to secure sole control of any isthmian canal, had long since become a dead letter; yet that treaty had never been formally abrogated, and all past attempts to avoid its terms having failed, the treaty still stood as though fully and unreservedly acknowledged. This treaty, made in 1850, operated as a check, though as yet a silent one, upon any such legislation as the Senate at that time contemplated. Other influences, notably those of the great transcontinental railways, steadfastly opposed the passage of the bill. It was finally tabled, and the hopes of the Maritime Canal Company again withered.

Before the close of 1897 the President appointed a new commission, consisting of Admiral Walker, Colonel P. C. Haines, and Professor Lewis N. Haupt, to make a final and complete survey of the entire Nicaraguan route. This commission proceeded to Greytown in November, 1897, with a corps of able engineers and a large force of assistants. It was armed with the most perfect scientific equipment. The sending of this commission—in this age of commissions—was really to serve a triple purpose. First, it would gather all the information needed by the government to satisfy Congress of either the feasibility or non-feasibility of the Nicaraguan route, and it would add one more expert estimate of cost to the many previous ones on file. Secondly, it would give the encouragement felt to be due those who clamored

for governmental control of the work. Thirdly, it would gain time. Time was the most necessary factor in the problem. The administration fully realized the futility of agitating the question of governmental control of the work, so long as the Clayton-Bulwer treaty remained unrevoked or unmodified; and to accomplish either of these ends, negotiations of a somewhat delicate nature must first be had with Great Britain. The occasion, however, for such negotiations was rendered inauspicious by the approaching conflict with Spain. England's good will was too valuable to challenge at such a time, consequently no actual efforts were made toward clearing away the diplomatic difficulties that surrounded the canal problem until the autumn of 1899.

In the meantime, however, the Maritime Canal Company began to realize that misfortunes never come singly. The promoters not only deplored their numerous failures to secure governmental aid and their consequent inability to raise the funds necessary to continue the work, long since abandoned in Nicaragua, but they also feared a revocation of their concession by the Central American state.

Nicaragua had already (1898) shown signs of uneasiness at the company's helplessness. By a communication of Mr. Rodrigues, Minister of the Greater Republic in Washington, to Mr. Olney (January 15, 1897), Nicaragua's objection, under the terms of the concession, to the Maritime Canal Company's connections with the United States Government, was set forth, and various acts of the company were cited to show a forfeiture upon its part of all its rights and privileges in Nicaragua. This was but the beginning. It was obvious that Nicaragua had lost faith in the company, though some allege that the government at Managua was sorely in need of money, and wished to sell a new concession—their stock commodity; others maintain that it came about through the mutual jealousies of Nicaragua and Costa Rica. These two neighboring states had always cherished the bitterest feelings toward each other. They quarrelled over their boundaries; they quarrelled over their respective rights on the San Juan River; and they quarrelled

over the ratio of their interests in the Maritime Canal Company. Their mutual dislike had proved unappeasable by war. Did Nicaragua desire to oust Costa Rica from her concessionary rights, or did Costa Rica demand a more substantial interest in the canal? Whatever may have been the inner motives that prompted her to do so, Nicaragua continued to give evidence of a purpose to declare the forfeiture of the Canal Company concession. On June 5, 1897, she entered into contract with the Atlas Steamship Company, whereby the latter secured exclusive rights of navigation and railroad construction on the lagoon at the mouth of the San Juan River and along the bank of that river. Sole privileges of navigation on Lake Nicaragua were also granted to this English company. While it was expressly stated in this contract with the Atlas Company that nothing in the instrument should be considered as an obstacle to the carrying out of any contract the Nicaraguan Government may have previously made in regard to the opening of an interoceanic canal, yet the contract certainly bore upon its face an affront to the Maritime Canal Company. The latter company made vigorous protests, alleging gross violations of its rights under its concession of 1887, and called upon Congress to lend its support in resisting this unwarrantable act on the part of Nicaragua.

The limit of grievances was not yet reached. In 1894, just after the failure of the Construction Company, which, it will be remembered, had held the contracts from the parent (Maritime Canal) company, for the actual construction of the canal, a number of wealthy men in New York and Chicago became sufficiently interested in the ship-canal project to make an investigation into the conditions of the work along the route, with a view to purchasing necessary rights and undertaking the fulfilment of the contract themselves. Having visited the scene of operations the following year, they reported that the Maritime Canal Company had been unable, according to the terms of its concession, to keep pace with fleeting time in the fulfilment of its obligations. They discovered that the Nicaraguan Government was disposed to agree with them in that the existing company could

never comply with the terms of its contract, and they further discovered a willingness on the part of Nicaragua to grant them a concession of their own. Accordingly, in 1898, a canal syndicate was formed in New York City, among whose directors are to be found the names of W. R. Grace, J. D. Crimmins, J. A. McCall, Warner Miller, J. J. Astor, George Westinghouse, D. O. Mills, Levi P. Morton, G. T. Bliss, and many others well known in the financial world. This very substantial association, called the "Grace-Eyre-Cragin Syndicate," at once proceeded to secure a concession from Nicaragua, for which purpose its representatives appeared in Managua in the autumn of 1898. At that particular moment Central America was just reaching the point in the usual cycle of its political affairs, when several of its states were about to merge their own sovereignty into that of a Greater Republic, and their interests were to be united. They were to forswear forever the old bickering and quarrelling in a bond of everlasting amity and peace. President Zelaya received the envoys of the newly formed company with marked cordiality. In a special message setting forth the great advantages which would accrue from granting a concession to the newly organized company, he called a special session of Congress for the purpose of considering the validity of the old concession of 1887 to the Maritime Canal Company, and the propriety of granting a concession to the new company. The date of the president's message is October 27, 1897. That same day a contract was signed. The next day the Supreme Court pronounced the "Maritime" concession null and void for non-user and other reasons. The 28th and 29th were devoted to discussion of the contract by the Congress. The next day, the 30th, it was accepted by unanimous vote, and the day after it was approved as law. At 12 o'clock that night (October 31) Nicaragua ceased to exist as a sovereign state, and became a part of the Greater Republic of Central America, along with Honduras and San Salvador.

The contract thus hastily secured was considered by all parties to be an actual concession *in futuro*, to take effect on

October 10, 1899, upon which date the Maritime concession was declared to lapse. It differed in but few of its essential features from the Maritime concession of 1887. The company paid for it \$100,000, with a promise of \$400,000 more, as a pledge of good faith. It bound itself to begin the excavation of the canal within two years, and complete the same within ten years. The concession was in perpetuity, and the government bound itself by a declaration that no concession or privilege theretofore granted should, in any manner, "oppose, conflict, embarrass, or prejudice" this one. The free navigation, use, or disposition of all waters in the state were given to the company, which was also to retain exclusive control of the management and operations of the canal. The final articles set forth that it is "understood that for the purposes of this contract the Cardenas-Menocal contract (1887, to Maritime Company) shall cease to have legal existence on the 9th day of October, 1899, and therefore all the foregoing stipulations shall take effect without further action, declaration, or law, on the 10th of October, 1899, or sooner, should Messrs. Eyre and Cragin, their heirs or assigns, obtain the rescission of the Cardenas-Menocal contract. . . ."

A forfeiture of its concession from Nicaragua was naturally the greatest calamity that could possibly befall the Maritime Company, and now the very worst had happened. But the company still had to its credit nearly a year of grace before the contract came to its end, and the company's directors, undaunted by evil fortune, decided to make a final and desperate effort to save the company's life. Their best manner of seeking redress for the outrages which they felt had been perpetrated upon them by a fickle, irresponsible government was through interposition of the State Department at Washington. The right of the company thus to fall back upon national protection was found, first, in its national charter, which gave to Congress a privilege of supervision over all its affairs; and secondly, because its concession from Nicaragua and Costa Rica, by virtue of the quasi international character of its provisions, partook, in a measure,

of the nature of a treaty. There can be no doubt that the company had need of every resource at its command to extricate itself from the awkward position into which it had fallen, and it certainly played its strongest card in an appeal to the Department of State (December 2, 1898). A correspondence ensued, calling upon Nicaragua to show cause for its summary action in cancelling the contract of the Maritime Company, and further asking for an opportunity on the part of the company to make a defence.

The year 1899 therefore opened with two rival canal companies, each holding exclusive concessions from Nicaragua, and each clamoring for public recognition.

Now a third company, operating in Panama, suddenly came forward with a flourish of concessions and a budget of seductive arguments, further to confuse the already bewildered Senate and House committees who had in charge all matters pertaining to Central American canals. When the old Panama Company reached its disastrous end in 1889, its scattered wreckage was put through a process of manipulation by the courts of justice in France. Singularly enough, there remained some assets after the disaster, which, by the careful management of the "liquidators," or receivers, were converted into a nest-egg for a new and more healthy company; this was duly organized under the general corporation laws of France on October 20, 1894. By decree of court, all the canal and canal works, the concessions, etc., of the old company were transferred in full right to the new one. An extension of time to 1904, and then to 1908, within which to complete the Panama Canal, was obtained from the Colombian Government, and the new company set to work seriously and hopefully, though modestly in the matter of expenditures, as compared with the reckless extravagance of the previous management.

The sudden intrusion of this new factor on the commercial side of the canal problem led Congress into making an investigation into the merits and prospects of all three companies. From January 17th to the 25th, 1899, the Committee on Interstate and Foreign Commerce of the House heard a

presentation of the claims to governmental recognition and encouragement by the agents of the three rival companies.

The Panama Company presented an unexpectedly strong case. They had to their credit one fairly good and one excellent harbor upon the Atlantic and Pacific sides of the isthmus, nearly one-half of the entire work of excavation completed, an existing railroad paralleling the route of the canal, good concessions, and a force of three thousand men actually at work in the field. The company was shown to be solvent and its prospects bright. It asked for no financial aid, only to be spared adverse legislation. "We have a right to assume," concluded the attorney for the company, "that the Panama canal is a necessary, if not the controlling, factor in the solution of the isthmian canal problem."

The representatives of the Maritime Canal Company devoted their testimony largely to a defence of the company's rights under its concession from Nicaragua, and to explanations why it had failed to complete the canal within the ten years' limit as therein specified. They stoutly maintained that their concession had not properly lapsed, notwithstanding their own failures. As against the Panama route, they urged the superior advantages of their own, alleging a better harbor on the Atlantic side, fewer miles of actual canalization, shorter canal termini for vessels with northern port terminals, better advantages in the matter of trade winds; and finally, as a convincing argument, they showed that the Panama route involved diplomatic difficulties in the way of exploitation, which made it far less deserving of public notice than their own project in Nicaragua. Having referred to the financial panic of 1893, and its effects upon the company, Mr. Hiram Hitchcock, president of the Maritime Company, said: "This condition of affairs has necessarily led to a waiting attitude on the part of the company, during which time its franchises and possessions have been actively coveted by aspiring rival routes and interests, sometimes under the indirect inspiration of foreign powers; and it has encountered criticisms and direct opposition of enemies in the United States and Central America. In the face of all this, the com-

pany has remained solvent and faithful to its trusts, and it has protected the enterprise and preserved it for the people and government of the United States." Referring to the Grace concession, he said, "It was entered into by Nicaragua in violation of the rights and interests not only of this company (Maritime Company), but of the United States and of Costa Rica."

The representatives of the Grace-Cragin syndicate approached their examination by the House committee in the jaunty manner of victors fresh from the fray, and bearing the spoils of victory — in the shape of a remarkably liberal concession from Nicaragua. They believed the Maritime concession to have already become a worthless instrument, and insisted upon their own paramount rights to begin work October 9, 1899. Upon that day, they asserted, the Maritime Company would be called upon by Nicaragua to open the canal to navigation, which, needless to say, the Maritime Company would be unable to do; then the latter company would be obliged to stand forth and acknowledge its failure to carry out the terms of its contract and accept its forfeiture without further parley; then the Grace Company, as a private corporation, would step in with a clear field, and, with the best of concessions from Nicaragua, it would enter upon the task with every assurance of success. In substantiation of their claims in regard to the forfeiture of the Maritime franchise, they pointed out how the Nicaraguan Government had granted the Canal Association a generous concession along with ample time allowance, which should have assured the opening of the canal for universal commerce before the close of the century. "They waited. . . . Their chagrin and disappointment may be imagined as the weeks and months rolled into years without the turning of a wheel upon the work. . . . The dredges have for years been wrecks, resting on the bottom of Greytown Lagoon; the railway is rotted out and overgrown; the buildings are mere shells standing upon rotted timbers; the harbor is filled with sand, and the entrance from the sea is never, at the most, over three feet in depth. Such of the property as has not been destroyed has been realized upon. Much of the com-

pany's property has been sold under judgments. Piers, buildings, telegraph and telephone lines, steamboats, and dredges are gone. The remnant of railway that remains reverts to Nicaragua next October. We were told that the last sale of the company's assets was of hand tools, surveying instruments, etc., sold to the Nicaraguan Government for a few thousand dollars, part of which was paid to the company. The company's representative is now pushing the Government for the balance, in order to pay his salary and that of the watchman. To the Nicaraguans, at least, the attitude of the company, claiming ability to carry out an enterprise involving \$100,000,000, pressing a claim of a few thousand dollars against a Government which is the company's creditor, is ridiculous."

Such, then, being the deplorable condition of the Maritime Company, the representatives of the Grace Company believed that any claim on the part of the former to an extension of its franchises beyond October 9 of that year "would be treated by the Government of Nicaragua as the merest effrontery."

Before the committee examination into the status and prospects of the three canal companies had terminated, the Senate took into consideration a bill to amend the old act incorporating the Maritime Canal Company, its purpose being, as in the previous year, to place the company more completely under the auspices and control of the national government. Under this bill all the stock of the company originally issued was to be recalled, and new shares in place of it were to be issued to the United States Government, to Nicaragua, and to Costa Rica. Thus the financial bureau of the company would be transferred to an office in the Treasury Department. In the Senate bill a guarantee of neutrality of the canal was inserted with the following proviso: "The Nicaragua Canal being a necessary connection between the eastern and western coast lines of the United States, the right to protect the same against all interruptions and at all times, is reserved and excepted out of this declaration of the neutrality of said canal and its free use by other nations."

While this bill was pending, the examination of the three rival companies was progressing in the committee room, and the facts developed there tended very considerably to modify the ideas held by many in Congress upon the subject of the canal problem. The original draft of the Senate bill was entirely stricken out, and an amended form, entitled, "A Bill to provide for the construction of a canal connecting the Waters of the Atlantic and Pacific Oceans," was reported. This amended bill made no mention whatever of the Maritime Company, nor of any existing schemes in Central America, but provided simply for the governmental purchase of a portion of territory along the proposed canal route in Nicaragua, and called for an appropriation of the funds necessary for the United States Government immediately to undertake the work as a national project, irrespective of the claims or rights of any private company. Here, then, for the first time, the Senate had reached that point to which it had for so many years been tending,—a declaration for an American canal to be constructed by the government as a national undertaking. The bill passed the Senate by a safe margin, and, attached as a rider to the River and Harbor Bill, was turned over to the mercies of the House. There, however, it encountered the unyielding opposition of Speaker Reed, and immediately became involved in the meshes of an endless controversy over matters political, diplomatic, and technical. It was consigned to the waste-basket on the last day of the session.

In the meantime, the Nicaraguan Canal Commission, of which Admiral Walker was the chairman and which had been sent to Nicaragua under Act of June 4, 1897, had returned, and submitted to the President a preliminary report relative to its progress "in investigating the question of the proper route, the feasibility, and cost of construction of the Nicaragua Canal" (January, 1899). Three months later the final report was prepared; a synopsis of it, furnished by the State Department (May 31, 1899), gave the results of the two years' examination of the Nicaragua routes. It appeared by this synopsis that the three commissioners agreed as to the

best route through Nicaragua (differing in some particulars from the route selected by the Menocal survey), but they disagreed seriously in their estimates of the cost of construction. Admiral Walker and Professor Haupt calculated the sum as not exceeding \$118,113,790, while Colonel Haines believed the probable cost would reach quite \$16,000,000 more. These figures were deduced from a generous estimate of the expenses of actual construction ; nevertheless, there was left to the imagination a formidable array of unknown quantities which might call for extra millions.

The effect of this report, made by the most competent and disinterested engineers, and after a prolonged and most careful survey of the region, was, in one sense, encouraging to the friends of the Nicaraguan Canal, and, in another sense, it was quite the contrary. The feasibility of the Nicaragua route was thoroughly established ; there could be no further question upon that score, and the best course for the canal from Greytown and Brito, as well as the most advantageous disposition of locks and dams, were definitely fixed ; but the amount of treasure the monster would consume was, after all, highly problematic.

The recent appearance of the Panama agents in the conferences of the Senate and House committees, and the sudden awakening to new life and vigor of that once hopelessly discredited French project, produced a marked effect upon Congress. Had all been progressing smoothly in Nicaragua, the case might have been different ; but the Nicaragua canal project was becoming each year more and more entangled in a web of conflicting concessions, claims of rival companies, and the vexations of diplomatic misunderstandings. The Maritime Company, that step-child of the Senate and exponent of the Nicaraguan route, was dying on the street for want of the financial nourishment the Senate had constantly striven to supply, but had always failed to give. Year by year the determined efforts of its friends to make the building of the Nicaragua Canal a governmental project had also failed. In both branches of Congress, and especially in the House, a strong under-

current of opposition to all Nicaraguan canal measures tended to prevent successful legislation; now came the preliminary Walker report, which, though cheerful and hopeful in tone, told a discouraging story of costs and difficulties to be met. Congress began to look to Panama; perhaps, after all, it would be unwise to ignore the enticing promises of the French company.

Panama had not been examined for many years; indeed, it had never been investigated in the thorough and complete manner in which the Walker commission had surveyed Nicaragua. The same could be said of the other Central American routes, formerly considered within the realms of possibility, but long since abandoned. Possibly Nicaragua, with her load of annoyances, could be cast aside, and another and better route discovered. At all events, it were better to act upon full knowledge of all the conditions upon the isthmus, than to commit the nation to a route which might eventually prove less desirable. A further and more comprehensive investigation of all the possible routes was felt to be the proper course to pursue.

The State Department was embarrassed. Each year, when the canal bills were under discussion, the Secretary felt the awkwardness of the diplomatic situation in which the country was likely to be placed. Congress had a way of framing bills in matters relating to the canal question, and of giving utterance in the freest manner to policies, which were not in accord with the legal obligations of the country placed upon it by treaty stipulations. In short, the legislative branch of the government in this respect often worked to cross purposes with the executive,—while Great Britain anxiously looked on with a protest ready for filing the moment Congress succeeded in converting its ship canal theories into law. Clearly, if Congress were determined upon building, owning, fortifying, and controlling a Central American canal, something must first be done in the matter of amending the Clayton-Bulwer treaty. Delay was necessary,—obviously another commission was the thing!

On the last day of the session, the day upon which the

Senate bill for the construction of the Nicaragua Canal, as a rider, was stricken from the River and Harbor Bill, a clause was substituted in its place as follows:—

The President is authorized to make investigation of any and all practicable routes for a canal . . . with a view to determining the most practicable and feasible route for such canal, together with the proximate and probable cost of constructing a canal at each of two or more of said routes: And the President is further authorized to investigate and ascertain what rights, privileges and franchises, if any, may be held and owned by any corporations, associations or individuals, and what work, if any, has been done by such corporations, associations or individuals in the construction of a canal at either or any of said routes, and particularly at the so-called Nicaraguan and Panama routes respectively; and likewise to ascertain the cost of purchasing all of the rights, privileges and franchises held and owned by any such corporations, associations and individuals in any and all of such routes, particularly the said Nicaraguan route and the said Panama route; and likewise to ascertain the probable or proximate cost of constructing a suitable harbor at each of the termini of said canal, with the probable annual cost of maintenance of said harbors, respectively. And generally the President is authorized to make such full and complete investigation as to determine the most feasible and practicable route across said isthmus for a canal, together with the cost of constructing the same and placing the same under the control, management and ownership of the United States.

To enable the President to make the investigations and ascertainment herein provided for, he is hereby authorized to employ in said service any of the engineers of the United States Army at his discretion, and likewise to employ any engineers in civil life, at his discretion, and any other persons necessary to make such investigation, and to fix the compensation of any and all of such engineers and other persons.

So the session of 1899 closed with the canal question resting easily under the certainty of at least a year's delay.

The President at once appointed the members of the new commission. They were Admiral Walker and his two colleagues of the former commission, ex-Senator Pasco of Florida, Alfred Noble, George S. Morrison, and Professor William H. Burr of Columbia University, — three well-known and

distinguished engineers, — General (then Colonel) Ernst, U.S.A., and Professor E. R. Johnson of the University of Pennsylvania, a noted student of commerce and economics. With the generous sum of a million dollars to defray expenses, the new commission organized and proceeded to Central America.

After this final series of crushing blows, only that hope which springs eternal in the human breast could have induced the promoters of the Maritime Company to continue their fight for existence. Their only chance for success had been in the fidelity of Congress to their cause; now, in their darkest hour of adversity, the Senate had all but deserted them. It was upon the Senate they had chiefly relied, but now that body had passed a Nicaragua canal measure which utterly ignored them, and Congress had adjourned in March with the creation of a new commission whose duty it was to examine and report upon other routes as well as upon their own. Their one course to pursue was to induce Nicaragua to extend their privileges beyond the 9th of the following October — the fatal day upon which that state had arranged to celebrate the company's obsequies. Now, by the last article in the Maritime Company's concession, it is provided that:—

Any misunderstanding that may arise between the State of Nicaragua and the company in regard to the interpretation of the present stipulations shall be submitted to a court of arbitrators composed of four members, two of which shall be appointed by the State and two by the company.

These arbitrators shall be designated by each of the parties within the period of four months from the day on which one of the contracting parties shall have informed the other in writing of the want of agreement on the point at issue. Should one of the parties allow the aforesaid term to pass, it shall be considered as assenting to the opinion or claim of the other.

The company's last hope lay in this clause, and the directors sought to strengthen their position before Nicaragua by pressing their claims for a hearing through the State Department. The latter assumed the burden with some hesitation, and a

correspondence upon the subject was opened with Mr. Merry, the United States Minister at Costa Rica, there being at that time no diplomatic representative from Washington at Managua. The company's claim to an extension of time, under the terms of its concession, was based upon the assertion that the revolutions in Nicaragua within the last ten years—in reality a protracted reign of political disturbances—and enforced cessation of work caused by the investigations of the various governmental commissions, together constituted “events of main force,” that are “duly justified and sufficient to impede the progress of the work.” Negotiations looking to the settlement of the company's grievances progressed slowly, and the 9th of October arrived before the formal protest of the company, as set forth and required in the bond, reached the Nicaraguan capital. By the company's failure to make proper and due protest, and to present its case before the time limit set upon the company's franchise had expired, the Maritime Company lost its right to a tribunal; but in deference to an expressed interest in the company, shown by the United States Government, Nicaragua waived her rights in the premises and agreed to arbitrate. She at once appointed two natives of Nicaragua to serve as jurors, and invited the company to name two arbitrators; the company selected two men who were personally interested in the company, and whom Nicaragua challenged, coupling her challenge with a demand that all four arbitrators be Nicaraguans. To this the company firmly objected, and with this hitch in the proceedings the matter remained unsettled.¹

The future of the Maritime Canal Company was far from bright. It did not seem likely that, if a tribunal of arbitration were agreed upon, its decision could be otherwise than adverse to the company. Senator Morgan warmly championed its cause in 1899, but the following year Congress showed a more decided tendency to sever itself from all private or corporate canal schemes, and to retain a free hand

¹ A tribunal was eventually agreed upon which decided, in the autumn of 1900, adversely to the company. Against this decision the company excepted and lodged a protest in the Department of State.

to prosecute the work, when the proper time should come, as a purely national undertaking.

The Grace Company also encountered numerous difficulties. According to the provisions of its very liberal concession, it was to begin its corporate existence on October 9, 1899. Six months from that day, *i.e.* April 9, 1900, it was expected to be fully organized and equipped for work, and four months from the date of its complete organization it was expected to pay to Nicaragua the balance of the \$500,000 deposit. The members of this syndicate felt secure in their rights and reasonably satisfied with the outlook. They awaited judgment upon the Maritime Company case, confident that their rivals would be forever silenced by decree of the improvised court. They asserted perfect organization as a company, and their ability to furnish the funds necessary to complete the construction of the canal; and they declared themselves to be ready to pay the sum of \$400,000 still due to Nicaragua, the moment a demand should be made for it. Incidentally they considered their franchise worth \$5,000,000.

On the other hand, the syndicate was embarrassed by numerous difficulties. The good will of Nicaragua herself, an essential to success, was apparently lost. A decided coolness toward the company on the part of the concessionary government developed into outspoken disfavor. Nicaragua maintained that she blundered into granting the Cragin-Eyre franchise through a false belief that the syndicate represented a governmental project, and that it had the support of the President and the Congress of the United States. To-day Nicaragua expresses her desire to deal with the United States directly and to rid herself of private companies, in all of which she has lost faith. In the second place, the Grace Syndicate never won the support, nor even the confidence, of the men in the United States Congress who control the canal committees. Indeed, Congress was disposed to regard the syndicate as a speculative concern whose claims might be safely and properly ignored, should Congress decide to build the canal as a government work. The growing conviction of Congress that the government

should undertake and maintain the work upon a national basis promised an uncertain future to this Syndicate as it augured ill for the moribund Maritime Company.¹

Despite the excellent showing made by the representatives of the Panama Company in the Congressional investigation of January, 1899, and the resulting appointment of a scientific commission to examine that route, the star of that ill-fated project lost lustre as the new year (1900) approached. Every one remembered too well the brilliant promises of the old company, which had never been fulfilled; indeed, the whole distressing story of failure and fraud was too fresh in mind to permit even the chance of its repetition.

Suspicion began to attach to the sudden revival of this Panama scheme, and the impression gained ground, and finally prevailed, that its sudden advertisement was, after all, but a clever move, on the part of the transcontinental railroad lobby, to divert public attention from the only feasible canal route. Despite the prejudice it encountered in the United States, the Panama Company continued its strenuous efforts to impress the country favorably with its prospects. The latest move of its promoters has been in the direction of "Americanizing" the French company. As an initial step, it organized in New Jersey, at about the beginning of the year 1900, the "Panama Canal Company of America," to which the rights of the French company should eventually be transferred. In this manner the Panama promoters hoped to place their project upon an equal footing with the other two American companies in the race for governmental recognition.

Although the scientific commission was still in the field at the opening of the 56th Congress (December, 1899), the canal committees in both branches decided not to wait for Admiral Walker's report, which was not due for many months. A more propitious moment for carrying through a canal measure had never before existed. The private companies having suffered themselves to become involved in difficulties from

¹ The Grace Syndicate failed to meet its obligation to pay the balance of \$400,000 upon the stipulated date; the Nicaraguan authorities accordingly declared its franchise cancelled.

which they could not extricate themselves, could be safely ignored. The country at large favored the scheme of national construction, the executive endorsed it, Nicaragua demanded it, and the surplus in the Treasury, for the first time in years, was in a condition to meet the financial obligations necessary to undertake the work.

A "Bill to provide for the Construction of a Canal connecting the Waters of the Atlantic and Pacific Oceans," was accordingly introduced into the House by Mr. Hepburn, on December 7 (1899), and a bill of similar purport was placed before the Senate ten days later by Mr. Sullivan. Both measures provided for the immediate purchase of a strip of territory from Nicaragua and Costa Rica and called for appropriations — one bill, of \$130,000,000, and the other, of \$140,000,000 — to meet the expenses of construction. The Senate bill authorized and requested the President to negotiate with the Government of Great Britain for the abrogation or modification of the Clayton-Bulwer treaty, "so far and to such an extent as to enable the United States to own, construct, maintain, and operate under its exclusive jurisdiction, a canal. . . ."

It also provided for the purchase of any valid outstanding concessions from Nicaragua or Costa Rica, but the House bill not only ignored the treaty rights of Great Britain, but the legal rights of the concessionary companies in Nicaragua as well.

In his report accompanying the House bill (H. R. 2538), Mr. Hepburn expressly stated, in reference to these concessionaries, that "it is not believed that any one of these . . . has any right or interest that he can convey to the United States." In order to forestall any arguments of an ethical character which might be urged against the bill, he set forth, with considerable positiveness, his belief that the Nicaragua Canal, when finally built, would be entitled to no place in the field of international law, and further, that all considerations of the Clayton-Bulwer treaty could well be put aside, for — "It has been a dead letter from the day the treaty was signed to the present moment."

The passage of such a measure in Congress was at that time considered by many to be particularly indiscreet, in view of the fact that the Walker commission, for whose expenses \$1,000,000 had been appropriated, was still engaged in the examination of the various routes. An international scientific commission of high authority had recently pronounced the Panama project entirely feasible and had placed the cost at only \$102,000,000; it seemed, therefore, highly desirable that Admiral Walker's coming report should be received before either Mr. Hepburn's or Mr. Sullivan's bills should become law.

Both bills were amended in committee, and as amended were reported back to their respective Houses in January and February. Consideration of these bills for the moment was delayed by the stress of other and more important business, but the friends of both of them felt confident that early action would be taken, and that some sort of a canal bill would receive the sanction of both Houses before the end of the term; the sudden appearance of the Hay-Pauncefote treaty, with its unexpected provisions, effectually blocked for a time all further action upon the pending bills. Although it seemed highly improbable that final action on either measure could be reached during that session of Congress, the Hepburn bill nevertheless passed the House by the overwhelming majority of 225 to 35 votes (May 2).

The bill ignored all the private companies, and enacted that the United States Government should "acquire from the states of Costa Rica and Nicaragua, for and in behalf of the United States, control of such portion of territory now belonging to Costa Rica and Nicaragua as may be desirable and necessary on which to excavate, construct, and defend a canal of such depth," etc. It provided for such fortifications along the route "as will be required for the safety and protection of said canal and harbors." An appropriation of \$10,000,000 was called for to enable the Secretary of War to enter upon contracts for "materials and work that may be deemed necessary for the proper excavation, construction, defence and completion of said canal, to be paid for as appro-

priations may from time to time be hereafter made, not to exceed in the aggregate \$140,000,000."

The passage of this bill in the House marked the desire so generally felt throughout the country that the United States Government should construct an isthmian canal; but its passage was also ill timed, in view of the fact that the Hay-Pauncefote treaty was then before the Senate awaiting confirmation. The provisions of the treaty and of the bill, in so far as they related to the political control of the canal, were diametrically opposed, and the sudden passage of the bill in pointed contempt of the treaty was a measure well calculated to impugn the good faith of the nation. The bill failed to pass the Senate.

On February 13 (1900), another canal bill was introduced into the House by Mr. Levy of New York, which differed essentially from all previous measures looking to the construction of a Central American canal. Following the tenor of the Hay-Pauncefote treaty, which was then before the Senate, it provided for negotiations between the United States and other maritime nations, with a view to securing international coöperation and contribution according to the ship tonnage of the various nations in the construction of a neutralized ship canal. This bill was far too radical to meet with favor in the House.

A comprehensive glance at the history and development of the canal problem in Central America discloses the following facts:—

First, it was the object of the early navigators to find a natural strait connecting the two oceans.

Second, when the absence of such a natural waterway was definitely determined, the purpose was conceived to construct an artificial one.

Third, a number of projects were considered and discussed looking to this end during the sixteenth, seventeenth and eighteenth centuries.

Fourth, the United States became interested in the ques-

tion in the early part of the nineteenth century, after the independence of the Central American states had been established.

Fifth, other nations then became interested in the project, and numerous surveys were made covering not less than six possible routes. The early surveys were superficial, and wholly worthless in the light of more modern engineering science.

Sixth, the result of later surveys has been to reject all except the Panama and Nicaragua routes. French interest became focussed upon Panama, and the United States favored the Nicaraguan route.

Seventh, the failure and collapse of the French Panama Company had left for a time a clear field to the American companies in Nicaragua; but when the latter companies were driven to insolvency and inactivity, nothing less than governmental aid seemed to promise success.

Eighth, the result of recent surveys, combined with the experience of those who have attempted construction of the work, has been to demonstrate that the physical difficulties in the way and the probable cost of construction are greater than formerly supposed. While the advanced skill of engineering science has devised improved means of overcoming physical difficulties, it has at the same time developed many obstacles hitherto undiscovered.

Ninth, a recent phase of the question is a growing distrust in the ability of any private company to complete the work of constructing a Central American canal. For ten years past Congress has tended toward a policy of placing the work upon a national basis. This tendency reached its culmination in the 56th Congress by the introduction of bills into both Houses looking exclusively to governmental construction of the canal.

The great majority of the people of Europe and America have always believed that this convenient doorway to the Pacific should be opened to the world's commerce. The query naturally arises, Why, after three hundred years of effort, has it never been done? In spite of the physical difficulties, the work has at all times been considered

feasible. The great advance in the efficiency of scientific investigation has not tended to lessen these difficulties, but the admitted resources of modern engineering are acknowledged to be sufficient to overcome them. It would, of course, require many millions to accomplish the task, but a greater amount of private capital each year finds means of investment in other directions, while large sums prefer inactivity to an investment so hazardous. There is lack of neither skill nor capital. The majority of the people of the United States are probably of the opinion that the ship canal would pay dividends upon its capital within a few years after its completion, yet every company that has undertaken its construction has failed for lack of funds. For ten or fifteen years political parties in the country have been united in the belief that the government should undertake this work as a national project; and each year bills have been introduced into Congress looking to that end, yet none of these bills have become law.

It is true that a large transcontinental railroad interest has steadily opposed these measures, but that opposition could not by itself prevail year after year, against the desire of the country at large. One must then look elsewhere for that mysterious influence which seems to prevent the realization of these hopes of triumph over the obstacles of nature. It is probably to be found in the fear and distrust of each other entertained by the commercial nations of the world. While each one hesitates to make the enormous expenditure necessary to the construction of a Central American ship canal, each would no doubt promptly condemn exclusive ownership or control by one or even several of the other nations. So far, the Powers interested have been unable or unwilling to fix among themselves the political status of the canal when it shall have been built. It is necessary, therefore, that preliminary to the commencement of the work—work that will finally succeed in its object—some diplomatic questions of a delicate and serious character calling for adjustment must be met. For the United States, these questions have become more complicated by reason of the recent

development of public sentiment which indicates a purpose to claim, and possibly to demand, full and absolute political, if not commercial, control of any Central American canal wherever and whenever it may be built.

A review of the diplomatic aspects of this canal problem must be taken, and to make its history the more intelligible, it must be treated in connection with early events in Central America, out of which these international questions arose.

II

The earliest Spanish discoverers and explorers in the Western Hemisphere were followed almost immediately by numbers of their countrymen who came to win fortune in the New World. Considering the many perils of unknown seas and the many risks ashore, these Spanish pioneers founded flourishing colonies in Central and South America in a surprisingly short time. The Anglo-Saxon navigators, for the greater part, limited their field of exploration to the mainland of North America, and the colonists from the colder climates of Northern Europe sought regions where the winters brought snow and ice.

For quite a hundred years the Spanish enjoyed an unlimited monopoly of the trade connected with the Gulf of Mexico and the Caribbean Sea. In the sixteenth century Spain, at the zenith of her power and strength, grew opulent upon the rich returns from her transatlantic possessions. But her fleets of galleons, which took home the treasures of America, offered great temptations to piracy by certain adventurous spirits in Europe and America. In the early part of the seventeenth century, the famous "Buccaneers of the Spanish Main" appeared like so many harpies to prey upon these richly laden vessels of Spain. They came in steadily increasing numbers, sometimes founding settlements of their own in the West Indian Islands, whence they made excursions for robbery and plunder. Among these companies of roving freebooters a band of Englishmen found for themselves a safe and convenient rendezvous in the lagoons of the Mosquito Coast of Nicaragua.

They cultivated the friendship of the native Indians, and, though unrecognized and unauthorized to do so by England, they established upon these swampy shores an English settlement, thus forming the nucleus of a future English possession. In like manner, though many years later, another band of English adventurers, who may doubtfully be spared the name of pirates, took possession of points along the coast of Yucatan, and appropriated to their own use certain islands lying off the coast of Honduras, thereby founding the settlement of Belize, later known as British Honduras, and more recently created into a British colonial possession.

The terrible assaults of these desperate men upon Spanish commerce led to many angry protests from Spain, which only drew from England an equal number of denials of responsibility for her castaway and disowned subjects. Yet, with her accustomed diplomatic shrewdness, England lost no occasion to make political recognition of her settlements on the mainland of Central America. This was particularly evidenced in her treaty with Spain of 1670. All Spanish efforts to dislodge these unwelcome neighbors of her colonies, either by diplomacy or force, proved unavailing. In course of time, however, and possibly through pressure of civilization, the character and aims of these piratical settlers gradually assumed a better phase, and even before the beginning of the eighteenth century the descendants of these buccaneers became substantially honest and peaceful men. They betook themselves to cutting logwood, cultivating the soil, teaching morality to the Indians, and maintaining a growing and profitable trade with the English colony of Jamaica. The early history of these two settlements of Belize and Mosquitoland is but the story of a ceaseless struggle by England to maintain her questionable foothold on the continent against the efforts of the Spanish in Central America to loosen it. The degree of security enjoyed by these British settlers in Central America depended largely upon the varying fortunes of England and Spain in the European wars in which both powers were almost constantly involved. Thus, as late as 1814, by the treaty of Madrid, England was com-

pelled to disavow all colonial claims in Mosquitoland, and by the same instrument the English settlement of Belize was reduced to the status of a mere tenancy at will. The claims of her subjects amounted to a bare lumbering privilege granted to a company of Englishmen by the Spanish Government.

In the future course of events, however, England found further occasion to reestablish her lost prestige in Central America. A few years after the ratification of the Madrid treaty, and just after Spain had lost her sovereignty over the Central American states, the English again appeared on the Mosquito shore. With much pomp and ceremony they crowned the chief of the Mosquito Indians, "King of Mosquitia," and established an English protectorate over the newly created kingdom. Under the sheltering wing of the great British power, the southern boundary lines of Mosquitia suddenly expanded so as to include the mouth of the San Juan River, that vital spot of Nicaragua's territory. In quite the same manner, and as suddenly, Belize ripened into an English "possession," with a governor and other officers of state, under the title of "British Honduras," which now as a colony continues to flourish, time having cured the weakness of its tenure upon the land, and cleared away the doubts formerly cast upon its rights of existence.

The purpose of England's tenacious hold upon the mainland of Central America became clearer when, in 1847, the King of Mosquitia announced to the Nicaraguan Government that, on and after January 1, 1848, he would "reassume his lawful control" over the San Juan River. In pursuance of this notice, he duly appeared at the river's mouth with a force of English marines, and raised the colors of Mosquitia. Some skirmishes with the Nicaraguan soldiers resulted, but in the course of a few months, when the excitement had subsided, the English were thoroughly established in the old town of San Juan del Norte at the mouth of the San Juan River, which they changed to the name of "Greytown," and they were moreover strengthened in their enlarged possessions by a new treaty with Nicaragua, which

purported to recognize actual rights of sovereignty in the Mosquito king.

These English encroachments upon American soil were regarded with growing apprehension in Washington, not only because it seemed to be a clear and open defiance of the Monroe Doctrine, but also because it was foreseen that English acquisition of territory, through which the proposed Nicaraguan Canal must pass, would likely give rise in the future to many serious difficulties. Prompt action on the part of Congress was demanded by the American press to check this dangerous advance of British influence in Nicaragua. The isthmus routes were as yet unappropriated, and to gain an equal advantage with Great Britain, President Polk at once concluded a treaty with New Granada, now known as the United States of Colombia, securing to the United States exclusive rights of transit across the isthmus, in return for our promise to maintain the absolute neutrality of the transit line, and a further pledge to guard, against all attack, New Granada's complete political sovereignty over any line of transit the United States might construct within her territory. While securing these rights and privileges over the lower isthmus, President Polk despatched Mr. Elijah Hise to Nicaragua to investigate and report upon the recent acts of the British in connection with the Mosquito king, and also upon the extent of their encroachments, if any, upon the rights of Nicaragua. He was not clothed with powers to enter upon any negotiations whatever, the purpose of his mission as *chargé d'affaires* being, besides one of investigation, to use his influence in establishing more cordial relations with Nicaragua. Having arrived upon the scene, however, Mr. Hise became convinced that his duty was to obtain for his country the most liberal treaty possible from Nicaragua. He soon discovered ample evidences of a British purpose to secure possession of ports upon both coasts of Nicaragua, which would enable them absolutely to control the canal that it was hoped might some day connect the oceans at that point. The recent acquisition of California with its promises of

future wealth convinced him of the utmost importance to the United States of maintaining the route free from foreign influence. The canal was destined no doubt to be the main high way connecting the two distant sections of the country. In those early days the all but impassable deserts and unexplored mountain ranges of the West precluded the idea of a direct overland communication by rail to the Pacific coast, and consequently the importance attached to the Central American route was then much greater in the public mind than in later years.

Cognizant of these conditions and fully confident that the government at Washington, when once it had been led to appreciate the extent and motives of British aggressions in Central America, would ratify them, he proceeded, though unauthorized to do so, to conclude the articles of a new convention with the very willing Nicaraguan Congress. The treaty which he signed in June, 1849, gave to the United States, besides the usual privileges of such an agreement, the right to erect fortifications along the course of a proposed canal, and to hold and fortify the ports at either end of the route. In return for these privileges, the United States undertook to guarantee Nicaragua's sovereignty from sea to sea over all the territory she claimed. Such a compact, of course, not only completely ignored British claims at Greytown, threatening at once to draw England and the United States into a dispute, but it also involved an extravagant application of the Monroe Doctrine which was far too radical to meet with the views of President Taylor. A reaction from the aggressive foreign policy of the Polk administration had set in; Mr. Hise was recalled, and in his place Mr. E. G. Squier was despatched with all haste to Nicaragua to grapple with the situation.

Mr. Squier's instructions were extremely conservative. He was cautioned against all rash measures calculated to infringe upon the rights of others or needlessly to provoke hostility. He was assured that while the government was at all times ready and willing to maintain the "Monroe Doctrine," that doctrine was not inconsistent with the idea and purpose that an interoceanic canal should "concede equal

rights of transit to all nations," and that it "should not be hampered by any restrictions, either from local government or the company building it." Mr. Squier at once drew up a treaty with Nicaragua which granted the United States a right of way from sea to sea, and the United States in return guaranteed Nicaragua's right of sovereignty over the route and at both terminal ports; the right was reserved to Nicaragua to make similar treaties with any other nation or nations that cared to share this open right of way. Obviously, by entering into such a compact with the United States, Nicaragua again violated her treaty of the year before with England, and in guaranteeing Nicaragua's sovereignty over both ports at either terminus of the proposed canal, the United States necessarily stamped her disapproval upon the British seizure of Greytown.

While Mr. Squier was negotiating this very liberal treaty, the English resolved to strengthen even more firmly their grasp upon Nicaragua and the canal route by obtaining landed interests at the Pacific terminus of the canal. A British expedition, accordingly, started for the Gulf of Fonseca, in the territory of Honduras, which was the supposed future Pacific entrance to the inland waterway, for the purpose of seizing the islands in this gulf,—points of the greatest strategic value. Mr. Squier hurried to Honduras, and in order to forestall these British encroachments, he hastily concluded a preliminary treaty with Honduras (September, 1849), whereby, pending final negotiations, the Island of Tigre, in the Gulf of Fonseca, was ceded to the United States for a limited period. Now, strangely enough, Mr. Squier's hasty mission to Honduras had scarcely been accomplished, when the British expedition appeared, and upon the transparent excuse of an unpaid debt seized this same Tigre Island (October, 1849). Thus, in their struggle for the control of the territory through which the interoceanic canal was likely to pass, the two powers came face to face, and as the English commander refused to surrender his newly acquired island, it seemed that war was inevitable. In the meantime, the British had been no less active along the Atlantic coast; under pretext of definitely fixing the boun-

daries of the Mosquito kingdom, its domain had been considerably enlarged. The extent and character of the Hise treaty (though never ratified by the United States) had become known to England just before this time, but fortunately the subtle forces of diplomacy had already been utilized to avert an armed conflict, which the publication of the Hise treaty would certainly have precipitated; suddenly the news of the Tigre Island incident came to intensify the existing excitement in the United States.

In 1850 the American people had just come to a realizing sense of the fact that Great Britain and the United States were rivals for a controlling influence in Central America. The United States had occupied itself in reclaiming its vast domains and in creating new states in the wilderness which lay beyond the Mississippi; without thought of the effect upon the world at large, or a care for the "balance of power" in the Americas, territorial expansion westward had steadily continued. Texas was absorbed into the Union, and California, an empire in itself, was added to the growing body of the nation. Oregon and Washington were definitely marked out, and a lasting check was thereby placed upon British hopes of further expansion on the Pacific coast. Contact with the western ocean awakened thoughts of Oriental commerce, and here, for the first time, the influences were felt that had been operating to draw apart the two great powers, and that had made them rivals in Central America. Great Britain enjoyed monopoly of Indian and Asiatic trade, and when once that source of her commercial vitality was jeopardized, her disfavor and enmity were aroused.

The success of American arms in Mexico had in a measure intoxicated the people, and every advance in territorial gain seemed more than ever to prove the truth in those early prophecies that "a manifest destiny" would eventually place the whole continent under the American flag. This eagerness for territorial aggrandizement was no more than the outcome of a race between the North and South for extension of the slaveholding and free-soil area of the United States; but British statesmen saw in this mania for expan-

sion only a surer prospect of the extension of the United States north into Canada and south into Mexico and Central America. In the interest of her American colonial possessions, Great Britain sought to oppose such advances. The British Government foresaw the importance to England of a neutral Central American canal, and it anticipated the movements of the United States that should seek to place Central America under North American dominion, and deprive England of those joint proprietary rights in the canal which her trade interests demanded.

When the British first laid claim to Mosquitia, the American people, unmindful, continued to attend to their own domestic affairs; but when the British reoccupied the east coast of Nicaragua, and seized Greytown, the United States became aroused. The causes that for years had been silently operating to estrange the two nations now came to the surface, and a spirit of jealousy shadowed the popular mind in both England and the United States, and no doubt influenced both governments. The American people resented these recent acts of British aggression in Nicaragua, which they believed to have been inspired through feelings of enmity toward the United States. The mutual feelings of suspicion and distrust were enhanced by the determination of Great Britain to stand by the assumptions of the Mosquito chief who obstructed the building of an American canal through his territory. The belief had become general throughout the country and especially in the Southern states, that an open waterway through Nicaragua was absolutely essential to the integrity and welfare of the United States. The demand for a neutral canal had become so urgent, its importance so vital, that the people themselves were ready to risk war for it if need be; then came the British seizure of Tigre Island, which completed the chain of events that had brought about the bitter jealousies of the two nations. The danger of war in 1850 had become alarming.

Mr. Clayton, the Secretary of State, fully appreciated the gravity of the situation. As a practical statesman, he believed that the benefits arising from a great com-

mercian enterprise belonged rather to a state of peace than to a state of war, and perhaps already realizing, above and beyond the excitement and passions of the moment, that an interoceanic canal should be as free as the high seas themselves, he proceeded to open the way with the English Minister at Washington toward the negotiation of a treaty, which would not only be the means of preventing an immediate war, but which would also outline those practical and conservative suggestions which he believed it would be necessary to adopt to insure the completion of this great work.

The conclusion most earnestly sought was to induce England to withdraw from Greytown, for in that occupancy the Secretary saw the certainty of armed conflict. On this point it was known that American sentiment was fixed and irreversible. In return for such a concession, however, Mr. Clayton was willing to share with England in the political control and use of the canal, for he saw no reason why any one country should enjoy exclusive rights and privileges in what was designed to be an international highway, which, to be profitable and to subserve the purposes of its creation, must be always open and always neutral. In this spirit of friendship, and desirous of making the canal a "bond of interest and peace" between the two nations, rather than a "subject for jealousy," he approached Mr. Crampton, the British Minister in Washington, and invited his coöperation in considering the terms of a treaty that would harmonize British and American interests.

The danger in the situation was two-fold; first, England had seized new territory upon the American continent in open defiance of the "Monroe Doctrine," which, in itself, might be considered by Congress as a *casus belli*; and, secondly, the territory so seized was the country about the mouth of the San Juan River, which, of course, meant nothing less forbidding than English ownership of the Atlantic entrance to the proposed canal, — a condition of affairs manifestly intolerable to the United States.

To induce England to yield all her rights in Nicaragua would have been a most desirable consummation, but to oust

her at once from her position of vantage at Greytown was a *sine qua non* of peace.

Mr. Clayton, blinded perhaps to the importance of the first object by his extreme eagerness to accomplish the second, entered upon the negotiation without feeling quite justified in placing before England as an ultimatum the complete relinquishment of her claims over Mosquitia. He was prepared to yield community of interests and joint control in the canal, but feared to present this as the ultimate and only *quid pro quo* for total abandonment of British territorial claims in Central America. British statesmen were fully advised that exclusive English control of the canal would not be tolerated by the United States. A share in its management at best was as much as England could reasonably expect, and as a means of securing that share she already held Greytown, in the name of the Mosquito king.

In the correspondence that took place between the Secretary of State, Mr. Clayton, and Messrs. Bancroft and Lawrence, successive American Ministers in London, and also in the records of interviews between Mr. Clayton and Mr. Crampton, the British Minister in Washington, preparatory to the actual negotiations for a treaty, the attitude of Mr. Clayton and of the Taylor administration toward the question of a Central American canal is fully and most clearly set forth. The Secretary of State was thoroughly in accord with the popular view that under no circumstances should the United States permit Great Britain or any other power to exercise exclusive control of any isthmian transit route. Upon the other hand, he did not seek for his own country the exclusive control he denied to others, and in assuming his position he followed the universally accepted theory of the complete neutrality of ship canals. The doctrine of international freedom of transit as applying to artificial waterways had been defended by Mr. Clay in 1826, and supported by unanimous resolutions of Congress in 1835 and again in 1839. President Polk had not found this doctrine inconsistent with his notions of an aggressive Monroe Doctrine, and his successor, in his annual message to Congress of 1849, had declared that "no

power should occupy a position that would enable it hereafter to exercise so controlling an influence over the commerce of the world, or to obstruct a highway which ought to be dedicated to the common use of mankind." The convention concluded with Colombia three years previously contained a special clause calling for a guarantee of neutrality of the proposed isthmian transit route. No other ideas of the political status of an interoceanic ship canal had ever been entertained, — indeed, the very essence of the dispute that at that time bade fair to involve the two nations in war, was fear on the part of each that the other was seeking to gain for itself the monopoly over the Nicaraguan route.

When once it was understood by both Mr. Clayton and Lord Palmerston, as revealed by their correspondence, that neither power actually sought this monopoly over the canal, the way was at once cleared of the most formidable obstacles to the conclusion of a treaty. England's stubborn determination to maintain her foothold upon the east coast of Nicaragua was still an annoying factor in the negotiations; yet Mr. Clayton had reason to believe that, as soon as both nations had given a pledge not to seek exclusive control of the proposed route connecting the oceans, Great Britain's object in maintaining her territorial interests in Central America would vanish, and she would then voluntarily and gladly disembarrass herself of her charge.

Having in mind a policy thus broad and liberal, yet subservient to his country's best interest, Mr. Clayton entered upon the negotiations of a treaty with Great Britain desirous of obtaining no exclusive privileges in Central America that should be incompatible with the just rights of other nations; he was intent only on preparing the way for the construction of a great international highway that should be open to the world's commerce upon terms equal to all.

Final negotiations were immediately begun upon the arrival in Washington of Sir Henry Bulwer (January, 1850). At first Mr. Clayton persisted in his representations that unless Great Britain were willing to abandon her Mosquito protectorate he did not believe the neutrality of the canal could

ever be thoroughly effected, and without this concession in favor of a common ideal, and possibly as an earnest of good faith, the treaty would likely prove to be an instrument of empty words. But it seems never for a moment to have been the intention of Great Britain to relinquish her holdings in Central America, notwithstanding the fact that she was perfectly willing to join with the United States in a guarantee of neutrality of the canal. With considerable shrewdness the British commissioner argued that as the United States could have no real interest in existing British possession in Central America except in so far as they might appear to affect the neutrality of any future transit route, all concern upon that score would be at once removed by the signing of the proposed treaty, wherein, he alleged, England was entirely willing to pledge herself never to make use of her territorial possessions in Central America, or even to avail herself of her influence over any Central American state, to gain a dominion over the route inconsistent with the strictest terms of neutrality.

Political conditions in the United States very considerably favored Sir Henry Bulwer in the accomplishment of his purpose to conclude a treaty without yielding any of his country's territorial claims. Alarming reports of the events connected with recent British encroachments in Central America were just beginning to spread about the country, and, in consequence, feelings of hostility toward England were daily growing more outspoken and intense. The press demanded the reasons for delay in the building of the canal, and further demanded the immediate publication of the Hise treaty. Congress also yielded to the popular clamor and called for all the correspondence pertaining to the Central American canal. Mr. Clayton felt keenly the danger in making public these documents at that particular moment, and furthermore he betrayed his anxiety to Sir Henry Bulwer; the President, too, felt much embarrassed in continuing to withhold the desired correspondence from Congress. Bulwer was quick to take advantage of his opponent's confusion, and he played upon

Mr. Clayton's nervousness and evident desire to adjust the matter speedily as possible.

In the very midst of these diplomatic troubles, news of the Tigre Island incident arrived, and instantly popular excitement throughout the United States arose to feverish height. Indeed, Mr. Clayton himself, who hitherto had been struggling to overcome the natural suspicions aroused in his breast by Great Britain's persistent determination to cling to Mosquitia, was thoroughly angered. His hopes for a satisfactory conclusion of a treaty were wholly dispelled by this unfortunate event. However, Great Britain's prompt disavowal of the act restored harmony in Washington, though it left the country in a passively sullen mood. Negotiations were resumed and hurried along, and on April 19 the treaty was signed. In brief it provided:—

(1) Neither the United States nor Great Britain shall ever obtain or maintain for itself any exclusive control over the proposed ship canal.

(2) Neither power shall ever erect or maintain any fortifications commanding said canal or in the vicinity thereof.

(3) Neither power shall ever occupy, fortify, colonize, assume, or exercise any dominion over Nicaragua, Costa Rica, the coast, or any part of Central America, nor shall either make use of any alliance or protection that either affords or may afford, or make use of any intimacy, connection, or influence that either may possess, to gain that end.

(4) Great Britain and the United States shall mutually guard the safety and neutrality of the canal, and invite all other nations to do the same.

(5) Great Britain and the United States will extend their aid and protection to any canal company, having proper authority and working under fair and reasonable terms.

(6) In order to establish a principle the two powers will also extend their aid and protection to any other practical means of transit across the isthmus, either by canal or rail.

Neither Mr. Clayton nor Sir Henry Bulwer was fully satisfied with the convention. The Secretary of State felt troubled by his failure to persuade Great Britain openly

and unreservedly to relinquish the Mosquito protectorate, yet the main object of the treaty — the assured neutralization of the canal, was satisfactorily accomplished. With that question settled, the Mosquito claims of England, so far as the United States was concerned, had lost their greatest significance. In fact, Bulwer wrote to Palmerston that, "We have no longer any interest in maintaining the Mosquitos [Indians] where they are, nor our protection over them in that locality;" but as Great Britain could not "honorably abandon" her ties with the Indians, Bulwer frankly suggested to the British foreign secretary that some arrangement be made whereby the Mosquito Indians "could be withdrawn from the vicinity of the canal, and thereby remove all cause of dispute [with the United States]." Upon the whole, then, the satisfactory features of the treaty — among which must be counted the probable exemption of the country from a war with Great Britain — seemed at the time to outweigh its omissions.

The instrument was severely criticised in the Cabinet, and afterward met with strong opposition in the Senate, notwithstanding which, however, it was soon ratified by a vote of 42 to 11.

The treaty was immediately endorsed by the British Government. Before the exchange of ratifications was effected, however, Palmerston became disturbed by the ambiguous nature of the phraseology of the first article, and being, moreover, desirous of removing any misapprehensions that he feared might still exist upon the subject, he ordered Bulwer to announce to Secretary Clayton that British interpretation of the language of the treaty left unaffected existing English possessions in Central America. Bulwer accordingly met the Secretary of State with the declaration that "Her Majesty's Government does not understand the engagements of that convention to apply to Her Majesty's settlement at Honduras, or to its dependencies." The word "dependencies" was somewhat vague, and as it pointed ominously to the Mosquito reservation, it no doubt uncovered to Mr. Clayton's vision the skeleton which he had

been so anxious to conceal. There can be little doubt that the great majority of senators, if not all of them, who had voted for ratification, had assumed that the treaty called for relinquishment of Greytown and all of Mosquitia, — that being but part of the agreement which they hoped would inaugurate a new era of friendly coöperation of the two great powers in the construction of the canal.

Even without a definite statement in the instrument to the effect that Mosquitia would be abandoned, Mr. Clayton believed that that result would very soon be brought about when once the treaty was in force, and he was undesirous of surrendering the other advantages to his country, which he supposed the treaty offered, simply on account of this new assertion of England's unwillingness to yield her Mosquito pretensions. But the subject was a peculiarly delicate one; the Secretary's colleagues in the Cabinet (with the possible exception of Reverdy Johnson, the Attorney General), and those of his personal friends, in whose confidence the negotiations reposed, felt it to be a mistake to conclude a treaty without a positive promise on the part of Great Britain to withdraw entirely from Nicaragua.

Possibly Mr. Clayton entertained similar misgivings. The political situation in the United States, however, which threatened at any moment to spring the mine of anti-British feeling at home and thus wreck every effort he had made to check further English aggression in Nicaragua, and to secure a neutral waterway, impelled him to continue in his efforts to reach an understanding, even though an ambiguous one. Perhaps a half loaf were better in this case than none at all; at best, the treaty represented a mutual yielding of interests which both nations considered vital and were extremely loath to concede. From a first formed determination, then, to refuse an exchange of ratifications upon the basis of Sir Henry Bulwer's declaration and to abandon all further negotiations, Mr. Clayton finally decided, as a last resort, to try the plan of placing a construction upon Sir Henry Bulwer's reservation that might be more satisfactory to himself and yet acceptable to Great Britain. Mr. Clayton accord-

ingly approached Sir Henry Bulwer with a proposition for a counter-declaration, in which he proposed to limit the term "dependencies" by making special mention of the islands along the Honduras coast, expressly omitting reference to Mosquitia. Sir Henry Bulwer agreed to this with the understanding that "it was not the intention in the treaty to embrace whatever is Her Majesty's settlement at Honduras, nor whatever are the dependencies of that settlement."

To leave no room for "charges of duplicity against our government," Mr. Clayton addressed a note to Mr. King, Chairman of the Senate Committee on Foreign Affairs, acquainting him with Sir Henry Bulwer's declaration, but he omitted to mention in his note to Mr. King the word "dependencies." Mr. King was probably not surprised by receipt of the Secretary's letter, for he had never supposed that British Honduras was to be abandoned by Great Britain under the terms of the treaty; he replied the same day (July 4) that "The Senate perfectly understood that the treaty did not include British Honduras, — but," he added, in a tone of admonition to the Secretary of State, "you should be careful not to use any expression which would seem to recognize the right of England to any portion of Honduras [*i.e.* outside of British Honduras]." Upon receipt of Mr. King's answer, Mr. Clayton sent a note (it had been already prepared) to Sir Henry Bulwer, in which he said: —

The language of the first article of the convention concluded on the 19th day of April last, between the United States and Great Britain, describing the country not to be occupied, etc., by either of the parties, was, as you know, twice approved by the government, and it was neither understood by them nor by either of us (the negotiators), to include the British settlement in Honduras (commonly called British Honduras, as distinct from the state of Honduras), nor the small islands in the neighborhood of that settlement which may be known as its dependencies.

To this settlement and these islands the treaty we negotiated was not intended by either of us to apply. The title to them it is now and has been my intention throughout the whole negotiation to leave as the treaty leaves it, without denying or affirming or in any way meddling with the same, just as it stood previously.

The Chairman of the Committee on Foreign Relations of the Senate, the Honorable W. R. King, informs me that the Senate perfectly understood that the treaty did not include British Honduras.

With this last presentation of "declarations," ratifications were exchanged the same day (July 4), and the treaty was proclaimed as law the day after.

It appears to have been understood by both Mr. Clayton and Sir Henry Bulwer that any amendments, alterations, or qualifying statements in the treaty subsequent to its ratification by the Senate would be considered of no force whatever. Such being the case, these various statements on the part of the negotiators, made just before the final exchange of ratification, will serve only to show the intention of the parties who framed the instrument, but may scarcely be accepted as part of the *res gestæ* of the negotiation. From the varying shades of meaning expressed throughout these negotiations, — particularly as both negotiators were not only sparring to gain advantage one over the other, but were also endeavoring to shield their designs from publicity — it is not easy to interpret the precise understanding of either. But it now seems reasonably certain that Mr. Clayton did not anticipate British withdrawal from Mosquitia as obligatory under the terms of the treaty, though he expected such action to follow as a natural consequence of the British promise not to fortify, etc., any point in Central America, and also because he conceived Great Britain's sole object in retaining her hold upon Nicaragua to have departed upon ratification of the treaty. It is equally certain that the Senate did anticipate an immediate withdrawal of all British claims on the Nicaraguan coast. Sir Henry Bulwer's acceptance of Secretary Clayton's "counter-declaration" would indicate that he had wavered in his determination to save Mosquitia for Great Britain; and yet, on the other hand, his whole attitude, from the opening of the negotiations to their close, demonstrates a fixed and dogged purpose to the contrary. There can be but little doubt that the Bay Islands were considered by both Mr. Clayton and

Sir Henry Bulwer as part of the dependencies of British Honduras. As for British Honduras itself—the former Belize—there was no question in any quarter, not even in the Senate, but that it was excepted from operation of the treaty. This is confirmed by an official exposition of the convention which appeared in the *National Intelligencer* but three days after its promulgation; it was there asserted that “the British title to the Belize the treaty does not in any manner recognize, nor does it deny it or meddle with it. That settlement remains, in that particular, as it stood previously to the treaty.” No mention, however, was here made of the dependencies, and the people of the United States were still left in ignorance of the uncertainties which existed in official circles connected with that word.

President Taylor’s death occurred on July 9, and about one week later his successor in office, President Fillmore, transmitted a communication to Congress, with which he submitted a copy of the treaty itself. “Its engagements,” he said, “apply to all the five states which formerly composed the republic of Central America and their dependencies, of which the Island of Tigre was a part. It does not recognize, affirm, or deny the title of the British settlement at Belize, which is, by the coast, more than five hundred miles from the proposed canal at Nicaragua. The question of the British title to this district of country, commonly called British Honduras, and the small islands adjacent to it, claimed as its dependencies, stands precisely as it stood before the treaty. No act of the late President’s administration has, in any manner, committed this government to the British title in that territory or any part of it.”

Thus it seems clear enough that whatever misunderstanding there may have been between the negotiators of the treaty, that misunderstanding was in reference to Mosquitia, and not to Belize, known as British Honduras, nor to the Bay Islands. Furthermore, whatever may have been the belief in Congress as to the meaning of the abnegatory clauses of the first article (whether or not prospective in character, requiring Great Britain to abandon her Central American

possessions, or permitting her to retain them), the Senate accepted the above message without protest, and would thereby seem not to have been surprised or disappointed as if by a new and astounding revelation.

Had Mr. Clayton been endowed with a keener sense of that political foresight which was possessed to such a marked degree by Washington and Jefferson, he would have recognized his error in not holding out firmly against British asserted rights in the "dependencies" of British Honduras, and making British abandonment of the Mosquito protectorate a condition of all negotiation. There can be little doubt that Palmerston eventually would have yielded, and Mr. Clayton would have spared his country many unfortunate misunderstandings with Great Britain, and years of controversy between Washington and London.

With due respect for Mr. Clayton's skilful management of a difficult international situation and for the ability which he may have displayed in delivering the nation from possible war, an unpleasant appearance of double-dealing with the Senate is inseparably connected with his correspondence on the subject. Just why Mr. Clayton did not choose to make Congress cognizant of the exact meaning of Bulwer's qualifying note can now be understood, and his motives appreciated; yet the questionable course which he saw fit to adopt at a critical moment was a temptation to which he should not have yielded—an error he should not have committed. Had Mr. Clayton been less actuated by fear, he might have utilized for his own benefit those very threats of war which terrorized him into concluding a bad bargain. That both Bulwer and Palmerston were alarmed by the prospect of war, and that they were willing to direct their course well within the lines of discretion, is made manifest from certain portions of their correspondence while the treaty was in course of negotiation.

Sir Henry Bulwer's tactics in the making of the treaty have been a frequent theme of censure against English diplomacy in this country. That he played his hand skilfully, reserving to best advantage his largest trump until the

never further Brit. aggression

last, cannot be denied; yet the method employed by that shrewd statesman, in all fairness to both sides, cannot be characterized as dishonest. It was "clever" in so far as he outwitted his antagonist by playing upon his fears and profiting by his errors in judgment. Mr. Buchanan, then in private life, wrote to a friend shortly before the conclusion of the treaty, — "If Sir Henry Bulwer can succeed in having the first two provisions of this treaty ratified by the Senate, he will deserve a British peerage."

Outside the ranks of the administration's most staunch supporters the treaty met with general condemnation. No objection was raised against those provisions of the agreement which called for international guarantee of the neutrality of the canal, but the fatal omissions in the instrument, when detected, brought forth the severest criticism upon the document, and on Mr. Clayton fell the accusations of a cowardly weakness. "The Nicaragua treaty is even worse than I had supposed," again wrote Buchanan in May, 1850.

Buchanan's words were true and his criticism just. The United States had pledged itself never to seek or exercise exclusive control over any Central American canal, nor to acquire any territory on the isthmus. Great Britain, on the other hand, had received a recognition of her claims in Honduras and all of its vaguely defined dependencies. Without actual surrender of anything, England had really secured an excellent footing for subsequent territorial expansion in Central America.

III

Aside from the misunderstandings under which the Clayton-Bulwer treaty was concluded, both Sir Henry Bulwer and Mr. Webster, the newly appointed Secretary of State under President Fillmore, realized that the instrument was imperfect, and, in many respects, far from satisfactory. They accordingly entered upon negotiations looking to the settlement of several important questions left open by the treaty. One of these questions was to determine the actual

status of Greytown—a matter rendered perplexing by the chronic boundary disputes between Nicaragua and Costa Rica. Indeed, this old-time quarrel had just then broken out afresh. The negotiations dragged along wearily for quite a year with the unhappy result of demonstrating to both men the impossibility of a mutually satisfactory conclusion.

A series of unfortunate events now took place, which seemed to sharpen the ill feeling already existing between the two powers, and, because of the mutual jealousies and suspicions thereby aroused, a deadlock resulted, making the reconciliation of American and British interests in Central America impossible for some time to come. Perhaps the distressing political conditions in Central America, at that particular time, were, in a large measure, responsible for numerous British and American follies; but, at all events, both England and the United States were led into committing acts in Central America which were in open violation of their treaty stipulations, and seemed to indicate bad faith upon the part of both.

With the evident intention of making it perfectly clear to all concerned that she still considered Mosquitia a part of the *dependency* of British Honduras, Great Britain proceeded formally to occupy Greytown with a military force, and profited further by the occasion to reassert her protectorate over the Indians. Having accomplished this, the British commander urged upon the Nicaraguans the advantages they would reap by abandoning their “pretended friends” (the United States), and coming “to an understanding without delay with Great Britain,” for only in London could sufficient capital and “spirit of enterprise be found for carrying out a project (the building of the canal) of such magnitude.” Thus were the Nicaraguans impressed with the fact of unimpaired Mosquito control of their Atlantic coast and over the port of Greytown. The United States was expected of course to take notice. This new assertion of British sovereignty over Greytown soon brought American and British subjects there resident into direct conflict. A crisis was reached in November, 1851, when an American vessel, be-

longing to the American Canal Company, the *Prometheus*, was fired upon by a British man-of-war, for refusing to pay certain port dues to the Anglo-Mosquito authorities.

The matter being reported to Mr. Webster, he promptly renewed his efforts to reach an understanding with the British Minister regarding Central American affairs. The act of firing upon the *Prometheus* was at once disavowed by Earl Granville; but the issue which Secretary Clayton had carefully avoided was now sharply presented, and the Secretary of State appreciated the urgent necessity for coming to a clear and perfect understanding as to the construction of the term — “dependencies of British Honduras.” The boundary dispute between Nicaragua and Costa Rica had become violent, and in this quarrel the sympathies of the United States and of England were arrayed upon opposite sides. Costa Rica, which had always cultivated British favors, claimed the right bank of the San Juan River, including Greytown and a small adjoining settlement of Americans who operated the temporary transit route across the state. Nicaragua, on the other hand, insisted upon the inclusion of Greytown within her limits, and she naturally resented the English occupation of that port; she also denied her neighbor’s territorial rights to the south bank of the San Juan River. In these contentions she was encouraged and upheld by the sympathies of the United States.

Mr. Webster and Mr. Crampton, the English Minister (Sir Henry Bulwer having returned to England) entered upon the settlement of the new disputes by attempting first to locate the true boundary line between the two little republics, thus hoping to eliminate one irritating factor from the total of their differences. To accomplish this, of course, it would be necessary to formulate a plan which would prove acceptable to both republics as well as to themselves. On April 30, 1852, an agreement was signed in Washington which, as a tentative arrangement, provided that Greytown and “Mosquitia” should be ceded to Nicaragua and a reservation set apart for the Indians. The Costa Rican territorial claims were acknowledged as far north as the

San Juan River, and full rights of navigation in the great lake were also accorded her. The plan was ostensibly a compromise measure, which would likely have relieved the situation had it been accepted; but Nicaragua not only rejected the agreement with a show of indignation, but curtly announced her displeasure at this instance of foreign meddling in her domestic affairs. Costa Rica's acceptance of the plan was not in itself sufficient; so the efforts of Webster and Crampton came to naught.

With matters in this unsatisfactory condition in Nicaragua and "Mosquitia," the attention of the United States was suddenly directed to Honduras. English capital had recently become interested in a railway project to connect two Honduran ports on the Atlantic and the Pacific oceans, and thereby to establish a transit route which would compete with the American transit route across Nicaragua, and also with the Panama route still farther south. The Bay Islands — a group lying off the Honduran and Guatemalan coasts — had formerly been appropriated by Great Britain and constituted, according to her assertions, a dependency of her settlement on the mainland (Belize or "British Honduras"). Her sovereignty over these islands had negligently been permitted to lapse, but in the interests of her projected schemes in Honduras, the British Government decided to reoccupy them. Accordingly, on June 17, 1852, the London foreign office announced that the islands of Ronatan, Bonacca, Brabant, Helma, and Morant should constitute a colony, "to be known and designated as the Colony of the Bay Islands." In August following the islands were formally occupied by crown officials.

Whatever may have been the merit in the British contention of ownership of the Bay Islands, the moment chosen for the overt act of their seizure was a most unfortunate one. The amicable relations of the two nations had at all times been more or less strained since the Tigre Island incident; and since the promulgation of an unsatisfactory treaty each government had continued to view the acts of the other in Central America with a high degree of suspicion and dis-

trust. The numerous failures thereafter to harmonize their conflicting interests had only aggravated the situation; both governments were more than ever ill disposed to grant favors or yield a point in Central America. In fact, the situation called for the most careful diplomacy, if their differences were to be settled upon a peaceful footing; but with an offensive bluntness, the British Government committed an act which, it must have foreseen, could only be accepted by the United States as one of unwarranted aggression and in direct violation of the Clayton-Bulwer treaty. The people of the United States were filled with indignation. The election of 1852 had brought the Democratic party into power, and the new administration — if for party reasons only — was strongly anti-British.

When Congress convened in December, the Senate at once called for all the correspondence relating to British advances in Central America, and General Cass of Michigan introduced a resolution, asking, "What measures, if any, have been taken by the Executive to prevent the violation of Article I of the Treaty of July 4, 1850?" On January 4 (1853), the President sent a copy of such correspondence to the Senate, which included the letters exchanged by Mr. Clayton and Sir Henry Bulwer just before the concluding ceremonies of the treaty. Then, it appeared for the first time, that the full meaning of that instrument, with its fatal reservation, was understood in the Senate. The scene that followed in that chamber was sensational. One after another of the senators arose to denounce, in the most vigorous language, the treaty, Mr. Clayton, the preceding Whig administration and Great Britain.

A resolution was drafted by the Foreign Affairs Committee to the effect that England's title to Belize was worthless, and that her occupation of the Bay Islands, and her position in Mosquitia were in direct violation of the terms of the treaty and in defiance of the principles of the Monroe Doctrine. The debate which followed upon the presentation of this resolution was characterized by an intemperate display of partisan feeling that has not often been equalled in the Sen-

ate. There can be no doubt that the bitterness of personal abuse, and the feelings of hostility against England that developed in this debate were induced, to some extent at least, by political reasons, for the discussion soon assumed a party cast. The Democrats, led by Douglass and Cass, attacked the treaty; the Whigs, under Sumner and Seward, generally supported it. The committee resolution was adopted, and the fury of the Senate finally spent itself in a declaration reasserting the principles of the Monroe Doctrine.

The storm at the capitol spread over the country, and the feelings of enmity toward England became more than ever pronounced. With an administration in power whose platform was essentially anti-British, a vigorous diplomatic campaign against England was expected. Mr. Marcy, the Secretary of State, had already expressed an opinion, that the Mosquito protectorate was void; that the erection of the Bay Islands into a British colony was unwarranted and in clear violation of the terms of the treaty, and that with the exception of British Honduras, to whose occupation by England he made no objection, Great Britain should at once abandon all her territorial claims in Central America. He was not to be shaken from his conviction that the American interpretation of the phraseology of the Clayton-Bulwer treaty, as held by the Democratic party, was a correct one, and that its acceptance by England should therefore be insisted upon. With such positive instructions Mr. Buchanan, the American Minister in London, was directed to enter upon negotiations with Lord Clarendon.

The earnest efforts of these two men to harmonize their conflicting views of the true meaning and intent of the Clayton-Bulwer treaty resulted in a total failure. Lord Clarendon made a lengthy statement in defence of his position, in which he maintained that Belize was not a part of Central America, as understood by the negotiators of the treaty, as it had for many years been a British possession, acknowledged by Spain, later by the Central American states, and, finally, recognized by the United States, as evidenced by the fact that an American consul had been sent to Brit-

ish Honduras in 1847 and had been permitted to carry on the duties of his post under a British exequatur. As to the Bay Islands, he maintained that they also had for some years before the treaty been British territory, and were considered a part, or rather a dependency, of Belize. To Mosquitia, he maintained, the treaty in no way referred, but that it only prohibited further colonization. Existing English possessions were in no way affected by the treaty, the inhibitory clauses relating merely to future acquisitions. Further to sustain the correctness of his views, Lord Clarendon called attention to the fact, that although this was fully evidenced in the words of the treaty itself, yet, to remove all possible doubt, the negotiators had thought it well, before final ratification, to exchange written declarations upon the subject, the purport of which had been to except British Honduras and its dependencies from the operation of the treaty. Continued occupation of these territories, therefore, by England, or any alterations in their political relations toward the British Government, could not be regarded as an infraction of the treaty.

Mr. Buchanan was equally firm in his views, which were upon every point diametrically opposed to those of Lord Clarendon. With convictions so radically divergent, the futility of compromise ought to have been foreseen, and the Clayton-Bulwer treaty should then have been abandoned for one more specific in its terms. The controversy was finally closed by Clarendon's somewhat impatient statement that Great Britain could not accept the Monroe Doctrine as an axiom of international law, and that he would decline further discussion of his country's original rights in Central America. Thus ended the matter for a time, leaving Central American affairs in the same unsatisfactory condition as before.

About this time an American Canal Company was operating a temporary transit route across Nicaragua over the San Juan River and Lake Nicaragua, and thence, by an overland stage road from the lake, to the Pacific Ocean. Just immediately south of Greytown an American settlement, made up

of the company's operators and that flotsam and jetsam of wanderers who gather at pioneer posts, had sprung into existence.

In an altercation between some Mosquito Indians and Americans an Indian was killed, and the smouldering antipathies of the two towns began to blaze. An Anglo-Mosquito mob attacked the house of the American consul, and the sailors of an American ship in the harbor came to their countryman's rescue. A pitched battle ensued. When the news reached Washington a gunboat was despatched to the scene and indemnity was demanded from the Anglo-Mosquito authorities. Upon their refusal to consider such a proposition, the American gunboat proceeded to bombard and destroy Greytown. This passage at arms did not help to relieve the diplomatic situation between England and the United States; nor, indeed, was the general situation in Nicaragua improved by events which immediately followed. An American citizen named Walker gathered about himself, in the Southern states, a band of followers who were desirous of adventure, and, finding his opportunity in one of the periodical civil wars in Central America, he made a bold dash for the city of Granada, and soon placed himself in control of Nicaragua. He was supported for a time by one of the warring factions of this turbulent republic, but his filibustering expedition, ostensibly carried out in the interest of the United States, was, in reality, for the purpose of extending the area of African slavery.

In every possible manner Walker antagonized British interests in Nicaragua, and the belief became general in England that the United States sought to acquire a Central American state. A counter military demonstration, on the part of Costa Rica, created the suspicion in America that England was covertly taking a part in these struggles along the canal route; and this belief elicited for Walker a larger measure of sympathy throughout the United States than he would have otherwise received. The Government at Washington finally went to the length of receiving a diplomatic agent, representing the Walker government at

Granada; the incident also stimulated the unfriendly feelings between England and the United States, and served as well to estrange from ourselves the good will of the Central American states. Walker was eventually deported and tried; but before his death he made several warlike expeditions into Central America, and succeeded in almost hopelessly entangling the United States in a triple contest, full of ill will, between herself, England, and Nicaragua.

These events in Central America reopened all the old wounds which the Clayton-Bulwer treaty had been designed to heal, and another series of acrimonious discussions in the Senate, levelled against British interference in Greytown and in Nicaragua, tended in no way to assuage the popular anger.

Mr. Buchanan had been succeeded in London, in the fall of 1855, by Mr. Dallas, and the latter was directed by the President to make a strenuous effort to secure a settlement of these Central American questions. These, along with other grievances against Great Britain, were rapidly assuming a dangerous aspect. The country was already deeply agitated by the drift of internal political issues, and party zeal was alarmingly strong. In the excitement and passions of the period, there was no skill of prophecy that could foretell the length to which either party might go, should foreign complication offer relief from the strain of that fearful domestic difficulty — the slavery question.

The Dallas-Clarendon negotiations were hurried along, and, on October 17 (1856), an agreement was reached, which was immediately sent to Washington for confirmation. It provided: (1) for the freedom of the port of Greytown under nominal Nicaraguan sovereignty; (2) the establishment of a reservation for the Mosquito Indians, thus abandoning the British protectorate; (3) the limiting of the Belize settlement within certain fixed lines; (4) the cession of the Bay Islands to Honduras. The convention was made conditional upon the ratification of a certain treaty just drawn up between Honduras and Great Britain. This latter treaty had been made in August, 1856, and constituted the Bay

Islands a free territory, coming partially under the sovereignty of Honduras, and yet free in the sense that it could not be taxed, nor its subjects be called upon to perform military duty, other than in their own exclusive defence. It will be seen, therefore, that the ratification of the Dallas-Clarendon agreement would oblige the United States to acknowledge the Bay Islands to be a free territory, over which a British protectorate would continue virtually to exist.

It has been thought not a little remarkable that the executive, representing a party so radically anti-British, and so positive in its demands that England should abandon, under the terms of the Clayton-Bulwer treaty, all her Central American possessions, should have accepted this convention with favor. In his last annual message the following December (1856) President Pierce said that the "occasion of controversy on this point [British pretensions in Central America] has been removed. . . . Should the proposed supplemental arrangement be concurred in . . . the objects contemplated by the original convention [Clayton-Bulwer treaty] will have been fully attained."

Obviously, this convention was a compromise which left Great Britain firmly established in Belize, doubtfully so in the Bay Islands, but did away entirely with her influence in Nicaragua. The Senate did not share the President's optimism, but promptly condemned the instrument, though finally, after considerable discussion, ratified it with certain amendments. The most important of these amendments struck out the clause making the treaty conditional upon the acceptance of the British-Honduran treaty of August, 1856. This particular amendment, however, was unsatisfactory to Lord Clarendon, for, by making an unconditional surrender of the Bay Islands to Honduras, he alleged it would leave unprotected a large number of British subjects who had taken up their abode there with the natural expectation of protection from the home government; however, since the Senate could not accept the conditions placed upon the retrocession of the Bay Islands, as already set forth, he

would propose a new basis of settlement, which was, — cession of the Bay Islands to Honduras, according to certain conditions to be incorporated in a new treaty between Great Britain and Honduras.

If the Senate had been unwilling to agree to conditions already known, it was not to be expected it would accept conditions that were unknown. Nothing short of the unqualified retrocession of the Bay Islands to Honduras was acceptable ; and, as Great Britain declined to accede to that proposition, the Dallas-Clarendon convention failed of ratification (May, 1857). Thus the two powers were thrown back once more upon the unsatisfactory Clayton-Bulwer treaty, with British officers at Greytown, a British protectorate over Mosquitia, together with British occupation of the Bay Islands, and full sovereignty over Belize.

In the fall of 1856 Mr. Buchanan was elected President upon a Democratic platform extolling the Monroe Doctrine, and calling for a vigorous foreign policy. He appointed General Cass, Secretary of State, whose radical views upon the subject of the Clayton-Bulwer treaty were well known, as he had upon former occasions in the Senate led his party in fierce opposition to that compact. Mr. Cass immediately concluded an agreement with Nicaragua which made secure American rights along the route of the proposed canal, and further accorded the United States the unrestricted right of transit for troops and munitions of war. The neutrality of the canal was guaranteed, and the influence of both parties pledged toward securing international coöperation toward that desirable end. Great Britain objected to this agreement upon the ground that it violated the Clayton-Bulwer treaty of 1850. It was never ratified.

Such was the diplomatic situation of the "canal problem" in the fall of 1857, and in accordance with the spirit of his party's platform, the President decided to remove embarrassment, at once and for all time, by abrogating the Clayton-Bulwer treaty and proceeding thenceforth upon an entirely new basis. "The fact is," the President urged upon Congress, "when two nations, like Great Britain and the United

States, mutually desirous, as they are, and I trust ever may be, of maintaining the most friendly relations with each other, have unfortunately concluded a treaty which they understand in senses directly opposite, the wisest course is to abrogate such a treaty by mutual consent and to commence anew. Had this been done promptly," he continued, "all difficulties in Central America would most probably ere this have been adjusted to the satisfaction of both parties. The time spent in discussing the meaning of the Clayton-Bulwer treaty would have been devoted to this praiseworthy purpose, and the task would have been the more easily accomplished because the interest of the two countries in Central America is identical, being confined to securing safe transits over all the routes across the isthmus."

Lord Napier, the British Minister in Washington, scenting danger in the hostile attitude of the Buchanan administration, approached the President with a new plan of settlement which he said his government was desirous of suggesting. An arbitrary abrogation of the Clayton-Bulwer treaty, he believed, would surely lead to acts in Central America which would disrupt the diplomatic relations of the two countries; this he was anxious to prevent. His proposition included two alternatives: a mutual abandonment of the treaty with a return to the *status quo ante*, in which case both powers would be left free to act in Central America just as if no treaty had ever been made; the other alternative was to lay the treaty, with its ambiguous phraseology and misunderstood provisions, before some European court of arbitration.

The President could accept neither of these propositions. That portion of the treaty which especially called for revision involved principles relating to the Monroe Doctrine, and the President suspected that those principles would not stand the test of a European tribunal. And, on the other hand, a formal recognition by the United States of the complete validity of English rights, as previously claimed in Central America, would be wholly impracticable.

With these avenues closed, Lord Napier then presented to

the President a third scheme for the settlement of the difficulty. He explained that the British Government was about to despatch an agent to Central America for the purpose of concluding a series of treaties with those states. In these prospective compacts he declared his government intended to make a disposition of Mosquitia and of the Bay Islands, in accordance with the wishes of the United States, as expressed in the amended form of the Dallas-Clarendon convention. Now, if this could really be accomplished, the President would have no cause to feel otherwise than satisfied. "To him it was indifferent," the President said, "whether the concession contemplated by Her Majesty's Government was consigned to a direct engagement between England and the United States, or to treaties between the former and the Central American republics." After a period of argumentative sparring, into which he entered with abundant caution, in order to make it clear to Lord Napier that only a settlement of those vexed Central American matters upon a basis of the American interpretation of the Clayton-Bulwer treaty, would be acceptable to the United States, the President consented to await the results of British negotiations in Central America before making any further move toward its abrogation.

Sir William Ouseley, the British agent in question, after a preliminary sojourn in Washington, proceeded to Central America upon his diplomatic mission. He was for a time delayed by a series of misadventures, brought about by the turbulent condition of affairs existing in Nicaragua; and it was not until 1860 that Lord Napier was finally enabled to submit to Mr. Buchanan the three treaties which Great Britain had concluded with Guatemala, Honduras, and Nicaragua respectively.

The first of these treaties was designed to adjust the boundary lines of British Honduras, which were liberally enlarged in favor of England, so as to include nearly all she had ever claimed in that region. As the original settlement of Belize had never figured as a cause of serious contention between the United States and England, the President was inclined to accord his approval to this agreement.

The second treaty—the one with Honduras—retroceded to that republic the Bay Islands, with the conditions that the recipient should never part with them to any other nation, and that British subjects, continuing to reside there, should be unmolested in their property rights and religious freedom. By this same instrument, England abandoned her territorial claim along the shores of Honduras, occupied by the Mosquito Indians, on the sole condition that Honduras should pay to the Indians an annual indemnity of \$5000 for ten years. This treaty also met with the President's approval, although he would have preferred the release of English territorial rights less hampered by conditions.

The third treaty (with Nicaragua) was the most important one to American interests. By this compact England withdrew from her protectorate over Mosquitia, but Nicaragua was required to establish a reservation along her shores for the Indians, permitting them to exercise local self-government, and also allowing them at any time to incorporate themselves absolutely into the body politic of Nicaragua, should they so desire. In this contingency, the reservation would be abandoned. Nicaragua was also obligated to pay annually to the Indians the sum of \$5000 for a period of ten years, in default of which Great Britain reserved the right to interfere in behalf of her former charges. Greytown was to become a free port under Nicaraguan sovereignty.

At last it seemed that all went well in Central America. Had England absolutely and unconditionally surrendered all her territorial claims in Honduras and Nicaragua, it would have been more satisfactory to the United States; yet, upon the other hand, this arrangement was a long move in the right direction, and it appeared to be a victory for the American interpretation of the Clayton-Bulwer treaty, and a vindication of the Monroe Doctrine as well. In his last annual message (December 3, 1860), President Buchanan expressed his satisfaction in the happy results of his diplomacy. "Our relations with Great Britain," he said, "are of the most friendly character. Since the commencement of my Administration the two dangerous questions arising from the Clayton and

Bulwer treaty and from the right of search claimed by the British Government have been amicably and honorably adjusted. The discordant construction of the Clayton and Bulwer treaty between the two Governments, which at different periods of the discussion bore a threatening aspect, have resulted in a final settlement entirely satisfactory to this Government."

The country at large acquiesced, and it was confidently hoped that the matter was forever settled, and that the troublesome Clayton-Bulwer convention would be permitted to rest peacefully in the archives of the State Department.

Thus closed in peace and concord a decade of bitter controversy growing out of this treaty. Fundamentally, the motives of these disagreements may be largely traced to suspicion. While neither party actually sought a monopoly of political control over the canal route, each power distrusted the other, and was ready to detect in every move of its opponent, a covert attempt to secure those forbidden advantages. But the hope that the controversy was forever ended proved vain. Twenty-one years later, Great Britain found her suspicions verified. The United States did covet a monopoly of the canal, and openly proclaimed her intention of acquiring it. The Clayton-Bulwer treaty was scanned anew for its imperfections, and the old-time quarrel was fought over once again, but upon new lines of argument.

IV

From 1860 to 1865 the United States was engaged in a struggle at home that rendered Central American affairs comparatively of little importance; nevertheless, the subject of a canal was never entirely lost sight of. In 1856 a series of riots at Panama interfered with the freedom of transit over the isthmian railway, and the United States found herself under obligation to use military force to relieve the interrupted route. Upon this occasion the Secretary of State, Mr. Marcy, disclaimed any desire for exclusive advantage in that line of transit; he went so far as to announce the American inten-

tion of inviting other nations to join in a "guarantee for the neutrality of that part of the isthmus." Six years later, revolutionary movements in Colombia again menaced the safety of the railway, and the Government at Bogota called upon the United States to lend aid in suppressing the rebellious uprising that endangered the freedom of transit between Colon and Panama.

Mr. Seward, the new Secretary of State, felt that the burden imposed upon the United States to maintain alone and single-handed the integrity of the Panama route against the numberless revolutions of a Latin-American state was unjust. The route was open to the world's commerce, and the responsibility of its protection, he believed, should rest equally upon the shoulders of all beneficiaries. The interest of the United States was in no manner "different from that of other maritime powers." He instructed Mr. Adams and Mr. Dayton, Ministers to London and Paris respectively, to ascertain whether Great Britain and France would "unite with the United States in guaranteeing the safety of the transit route and the authority of the new Granadian confederation."

At the close of the Civil War, a more lively interest in a ship canal was manifested, and steps were soon taken to encourage more friendly relations with the Central American states. American interests in Central America had been permitted to decline, and they were greatly in need of the stimulus which fresh treaties would give them.

The United States emerged from its four years' conflict with enlarged ideas of her position in the world; the seeds of a new and more aggressive foreign policy had been sown. The progress of those ideas is marked by the Alaskan purchase, the attempts to secure naval bases in the West Indies, the expulsion of the French from Mexico, and by the evidences of a belief, then gradually forming in the minds of the people, that the United States should exercise sole political control over any Central American canal that should ever be built.

Mr. Seward first gave expression to this new canal policy in 1866, when he directed Mr. Adams, the American Minister in London, to broach the subject to Lord Clarendon of the

United States purchase of Tigre Island as a coaling station (the same island that had figured so prominently in British-American relations in 1850). Would such action on the part of the United States be considered by Great Britain as a violation of the Clayton-Bulwer treaty? In his letter to Mr. Adams, Secretary Seward hinted that the Clayton-Bulwer treaty was void because it related to the building of a certain canal which had never even been undertaken. "It may be a question," he said, "whether the renunciatory clauses of the treaty are to have perpetual operation." The matter was not pressed by Mr. Adams, but the episode is important here, as demonstrating the birth of a new sentiment, which was in later years destined to expand into a national policy.

The Dickinson-Ayer treaty with Nicaragua, which stands in force to-day, was ratified in June, 1868. It cedes to the United States a right of way, though not an exclusive one, for canal building purposes; it guarantees freedom of ports and neutrality of canal, subject to the political sovereignty of Nicaragua. The United States also agreed to use its influence to induce other commercial nations to coöperate with it in guaranteeing such neutrality.

This treaty, therefore, like the one concluded with Colombia, twenty years previously, contemplated the neutrality of the canal; in this respect it was in full accord with the provisions of the Clayton-Bulwer treaty. A new treaty was also made with Colombia (1868), in the negotiations for which Mr. Seward exhibited a decided change of sentiment from 1862, touching the neutrality of the isthmian route. He inserted a clause in the draft of this Colombian treaty which provided that enemies of the United States should be excluded from the use of the proposed canal in times of war. The Colombia Government rejected the article, adding in its place a clause favoring international control. The treaty was given full discussion in the Senate, but failed of ratification. Had the Senate accepted this agreement with Colombia, it is quite certain that Great Britain would have protested against it as a violation of the Clayton-Bulwer treaty. No doubt Mr. Seward well knew

this, and he was probably intending to hasten an issue with Great Britain by this practical exposition of his theories.

Upon the inauguration of President Grant in 1870, a keen interest in the interoceanic problem was revived, and the new policy calling for exclusive American control of a Central American canal rapidly gained adherents. It was strongly urged by General Grant, and soon found many champions among the public men of the day.

There were several causes for the rapid development of this policy during the Grant administration. Many, who theretofore had never considered the question of canal neutralization in the light of a national issue, had their interest suddenly aroused by the French operations under De Lesseps at Panama. The prospect of European influence in the lower isthmus brought many converts to the extreme views of the administration,—and they, as is usual with most converts, exhibited great zeal in their new cause. The Monroe Doctrine, which had recently been fittingly and successfully applied in Mexico, had left its impression in a general revival of those principles which led the American mind to protest against any form of foreign aggrandizement on this continent. Indeed, the maintenance of these principles seemed sufficient reason in itself to warrant a demand for an exclusive American control of any ship canal enterprise in the Western Hemisphere. As most Americans, according to their own varying interpretations, believed in the wisdom of the Monroe Doctrine, they came perforce to accept what appeared to be a mere corollary or incident of that well-established faith.

After the period of reconstruction and the consequent reunion of the states, the need of such a canal continued to grow in importance, especially as the Pacific seaboard states rapidly developed a marvellous commercial growth. With two coasts to defend, the military value of such an American waterway, from the Atlantic to the Pacific, came more than ever to be appreciated. Consequently many began to argue that there could be no safety in a canal whose international guaranty should keep it at all times open as the high seas.

Thus the idea that the interoceanic canal should be constructed, owned, and then solely controlled by the United States, came so generally to be accepted by all political parties that it may be said in 1880 to have become crystallized into a definite national policy.

The most formidable obstacle, however, which stood just in the way of realizing this ideal was the Clayton-Bulwer treaty. Consequently each administration, since that of President Grant, has in turn made some attempt to remove this obstruction. With the general acceptance of the more radical theories of American monopoly of the canal route, it has been difficult for many legislators to comprehend how their predecessors could have entertained dissimilar views upon the subject; for this reason the Clayton-Bulwer treaty has been frequently denounced in Senatorial debate within the last twenty years, as a monument to American imbecility. These critics are apparently unmindful of the conditions under which the treaty was originally made and of the diplomatic negotiations which followed its ratification. Actuated by the conviction that the agreement is a prejudicial one, senators have for twenty years periodically sought to abrogate it.

Prior to 1880, however, no systematic effort, because of its supposed antagonism to American interests, had been made to repudiate the Clayton-Bulwer treaty, for although the growing sentiment in the United States, calling for American control of the canal, conflicted with the provisions of that treaty, up to that year the instrument itself was generally accepted as a binding agreement, and no actual attempt was made by those who regarded it with disfavor to abrogate or otherwise avoid it. On the contrary, great solicitude was at times manifested lest Great Britain should violate its provisions. When Belize was transformed from a British settlement to a *colonial* possession, American protests were made predicated upon the provisions of the Clayton-Bulwer treaty. Upon other occasions as well, when Great Britain's motives in "adjusting" her Central American boundary lines were brought into question, the Clayton-Bulwer treaty

was quoted to the British Minister in Washington as a sufficient condemnation of England's conduct.

As already noted in the development of this new theory of American political control of the canal, the operations of the French company under De Lesseps, at Panama, played an important part. Fearing that the French might realize their Central American objects and thereby gain for themselves an undue military advantage over the United States, President Hayes, in March, 1880, sent a special message to Congress declaring the policy of this country to be "An American canal under American control." He said: "The United States cannot consent to the surrender of this control to any European power or combination of European powers. If existing treaties . . . stand in the way of this policy . . . suitable steps should be taken . . . to promote and establish the American policy. . . . It is the right and duty of the United States to assert and maintain such supervision and authority over any such interoceanic canal across the isthmus . . . as will protect our interests." At another time President Hayes asserted that the United States should consider the banks of the Nicaragua Canal as a continuation of the American shore line, which doctrine would, of course, claim the right in the United States to hold, fortify, and defend the same.

Following this exposition of the executive's position on the canal question—which was the first official and public declaration of the new policy—Congress passed several resolutions recommending the repudiation of the Clayton-Bulwer treaty. These resolutions were inspired by the same fear that had actuated President Hayes, and were also aimed at France and her Panama canal scheme.

The growing opposition to the Clayton-Bulwer treaty and to the principles for which it stood reached one of its crises in 1881-82. In the early part of that year rumors were circulated in Washington that several European powers, at the request of Colombia, were considering the advisability of adopting some plan of concerted action looking toward a joint guarantee for the neutralization of the French canal at

Panama. Colombia had again declined to make a treaty with the United States which would bind her to accept the sole guarantee of the latter for the neutrality of the isthmian transit route; the situation in Central America seemed unsatisfactory. President Garfield, in his inaugural address, March 4, 1881, touched upon this question, though with considerably more calmness than had been displayed by his predecessor. While declaring that the United States wished to follow no narrow or exclusive policy, nor sought exclusive privileges, yet on the other hand, it was the "right and duty of the United States to assert and maintain such supervision and authority over any interoceanic canal across the isthmus . . . as will protect our national interests."

But the Secretary of State, Mr. Blaine, was more deeply moved by the threatened danger to American interests. He was wholly in sympathy with the popular movement demanding the abrogation of the Clayton-Bulwer treaty; he felt that the time had arrived for action, and he precipitated a controversy with Great Britain by a bold and altogether defiant stroke. On June 24, 1881, quite in disregard of the obligations imposed upon the country by the Clayton-Bulwer treaty, he issued a circular letter to the powers of Europe, informing one and all that the United States would in future tolerate no foreign interference in the matter of political control of any isthmian canal; assurance being given, however, that the United States would itself "positively and efficaciously" guarantee the neutrality of any such route; also, that no assistance or aid from any other power to this end was necessary; furthermore, he gave notice to all that any insistence on the part of European nations to have a share of responsibility in the neutralization of the canal would "partake of the nature of an alliance against the United States." In further elaboration of this recently adopted and somewhat novel attitude of his country toward the subject of canal equalization, Mr. Blaine especially desired that the various diplomatic envoys of the United States, to whom he had addressed his circular letters, should "not represent this position as a development of a new policy." He alleged, on the con-

trary, that it was "nothing more than the pronounced adherence to principles long since adopted."

It is difficult to see just how Mr. Blaine had been enabled to justify to himself the correctness of this last statement, especially in view of the fact that the American canal policy, as set forth in his circular note, had been but the actual outgrowth of the previous decade, while the theory of a completely neutralized canal, on the other hand, had obtained in the United States for more than half a century.

No doubt the British Government was surprised by the receipt of Mr. Blaine's circular letter. The full statement of the new American position had been made in complete disregard, if not in open contempt, of the Clayton-Bulwer treaty. The British Minister for Foreign Affairs, Lord Granville, was pointedly brief in reply, and his answer bears a hint that he suspected Mr. Blaine felt the weakness of his own position. He merely said that the matter in question had already been settled by the engagements of the Clayton-Bulwer treaty, and that "Her Majesty's Government relied with confidence upon the observation of all the obligations of that treaty."

Mr. Blaine anticipated the issue to be presented, and before the receipt of Granville's note, he despatched to Mr. Lowell, the American Minister in London, a lengthy communication upon the subject (November 19, 1881). The letter is no less remarkable for its plausibility than for its lack of logical consistency.

1. "This convention [Clayton-Bulwer]," he said, "was made more than thirty years ago, under exceptional and extraordinary conditions which have long since ceased to exist,—conditions which at best were temporary in their nature and which can never be reproduced. The remarkable development of the United States on the Pacific coast since that time has created new duties for this government, and developed new responsibilities upon it, the full and complete discharge of which requires, in the judgment of the President, some essential modifications in the Clayton-Bulwer treaty."

2. "The interests of Her Majesty's Government, [in a

Central American canal] . . . are so inconsiderable in comparison with those of the United States, that the President hopes " for a readjustment of the treaty.

3. At present the treaty "concedes to Great Britain the control of whatever canal may be constructed." This is necessarily the case because of England's great sea power.

4. The United States (owing to its position in the Western Hemisphere) "will not consent to perpetuate any treaty that impeaches our rightful and long-established claim to priority on the American continent."

5. Great Britain practically holds the route to India, her fortifications at all the important strategic points secure to her the mastery of the Mediterranean and the *Sed* seas, and this, together with the controlling interest in the Suez Canal, practically converts those waters into a *mare clausum*. Therefore, he argued, "If a hostile movement should at any time be made against the Pacific coast, threatening danger to its people and destruction to its property, the Government of the United States would feel that it had been unfaithful to its duty and neglectful toward its own citizens, if it permitted itself to be bound by a treaty which gave the same right through the canal to a warship bent on an errand of destruction that is reserved to its own navy sailing for the defense of our coast and the protection of the lives of our people. And as England insists by the might of her power that her enemies in war shall strike her Indian possessions only by doubling the Cape of Good Hope, so the Government of the United States will equally insist that the interior, more speedy, and safer route of the canal shall be reserved for ourselves, while our enemies, if we shall ever be so unfortunate as to have any, shall be remanded to the voyage around Cape Horn."

6. ". . . Only by the United States exercising supervision can the Isthmus canals be definitely and at all times secured against the interference and obstruction incident to war. A mere agreement of neutrality on paper between the great powers of Europe might prove ineffectual to preserve the canal in time of hostilities. The first sound of a cannon

in a general European war would, in all probability, annul the treaty of neutrality, and the strategic position of the canal, commanding both oceans might be held by the first naval power that could seize it." This would likely embroil the United States in foreign wars.

7. The United States is less likely to be engaged in foreign wars than are the European powers. Therefore to her should be entrusted the care of the canal.

8. Other powers are extending their Central American trade, while France is building a canal. The Clayton-Bulwer treaty leaves the United States powerless to assert her just rights on the isthmus, while these other powers are free to control the situation.

9. "One of the motives that originally induced this government to assent to the Clayton-Bulwer treaty, not distinctly expressed in the instrument, but inferable from every line of it, was the expected aid of British capital in the construction of the Nicaraguan Canal. That expectation has not been realized, and the changed condition of this country since 1850 has diminished, if it has not entirely removed from consideration, any advantage to be derived from that source."

Therefore the United States asks that "every part of the treaty which forbids the United States fortifying the canal and holding the political control of it in conjunction with the country in which it is located should be cancelled;" that "every part of the treaty in which Great Britain and the United States agree to make no acquisition of territory in Central America should remain in full force;" and that a neutral zone about each terminus of the canal, of liberal extent, should be preserved by agreement of the great powers of the world.

Ten days later, Mr. Blaine despatched another letter to Mr. Lowell, upon the same subject. The argument of "*Tempora mutantur*" was further elaborated. Mr. Blaine did not hold the Clayton-Bulwer treaty to be a void, but rather a voidable, instrument; it had always been a cause of friction between the two governments, a compact "misunderstandingly entered into, imperfectly comprehended, contradictorily interpreted,

and mutually vexatious," for which reasons, he inferred, its provisions could not properly be accepted as a guide to the action of either party in Central America. A full historical account of these many contradictory interpretations of the vexatious treaty, throughout the period of Sir William Ouseley's mission to Central America, down to 1859, is given. The numerous quotations presented demonstrate clearly enough the dissatisfaction felt in the United States throughout that period. He concludes, that for harmony's sake, the objectionable features of the convention should be removed by the common consent of the parties.

The weakness in Mr. Blaine's position is at once apparent. His argument amounts to a statement that the United States, having found the obligations of its contract irksome, and antagonistic to its new political policies, it therefore deems it fitting and proper to avoid them. The particular reasons advanced in support of his contention are, for the most part, quite unsatisfactory. The vast growth of the Pacific states, connected by numerous railway systems with the East, had been made under the very restrictions he complained of, and the ability of the West coast to protect itself had been strengthened by its marvellous advance in population and wealth. It is true, the interests of the United States were probably greater in a Central American canal than were the interests of Great Britain, yet the measure of interest cannot affect the legality of the contract. England might easily have asserted her own great interests in the route by simple reference to her merchant marine, which exceeded many times in value that of the United States; her own territorial possessions on the North American continent, having a Pacific coast line as well, though less in extent than that of the United States, demanded protection of their interests. The route from Halifax to Vancouver would be shortened as well as the route from New York to San Francisco.

Mr. Blaine's contention that the terms of the Clayton-Bulwer treaty, uniting Great Britain and the United States in joint protection of the Isthmian Canal, would give to the former virtual control, is scarcely true—and if true, could

have no weight as an argument in this discussion. If Great Britain could gain control of the canal, to the injury and prejudice of the United States, it would not be by virtue of any provisions in the Clayton-Bulwer treaty, but by reason of her superior naval strength,—a fact lying wholly outside the issue in question. On the contrary, the very obligations from which Mr. Blaine sought relief, being equally binding upon both governments, prevented the “control” of England over the canal. The treaty called for a joint guarantee of neutrality—a guarantee, it must be remembered, which tied England’s hands, as well as our own. There is no pardonable excuse for avoiding a contract because of the superior strength of one of the parties.

The claim to priority on the American continent, and to that position of vantage which gives to the United States a greater right in the management of all the political ventures in the Western Hemisphere, is a claim only to be upheld by military strength; such asserted right can be maintained only by force—it cannot be supported in the law. If this argument of Mr. Blaine were to be brought forward as a positive finale of the discussion, it could only indicate that the United States had decided to abandon its ^{treaty} pledges, to assert its control of the canal, and the ^{land} and by the consequences. But Mr. Blaine had no intention of thus conveying an ultimatum to Great Britain; his argument concealed no threat,—it was made solely in the hope that it might convince the British Minister that England’s interests were not sufficiently important to give her any part in the maintenance of an open waterway connecting the Atlantic and Pacific oceans. As such, it could only be considered a political argument, possessing but little of legal force.

The exposition of Great Britain’s position along the route to India, and her alleged control of the Suez Canal, as an argument for a similar course to be followed by the United States, along her route from the East to the West, was not sufficiently grounded on fact, even had it been relevant, to invest it with argumentative force. At that time the neutralization of the Suez Canal had not been thoroughly effected,

but Great Britain was the central figure in the attempt then being made, and later carried out by treaty of Constantino-ple, to secure the perfect neutrality of the Suez Canal. By this agreement Great Britain estopped herself from acquiring the control of that canal which her great naval strength might have given her. Her position along the route, through the Mediterranean and Red seas, had nothing more to do with the legal status of the Suez Canal than our own naval stations along the Atlantic and Pacific coasts might have with the Isthmian Canal.

Mr. Blaine's assertion that "only by the United States exercising supervision, can the Isthmian Canal be definitely, and at all times, secured against the interference and obstruction incident to war," is a statement much more susceptible of refutation than of proof. It is manifestly easier for two to stand guard than for one, and still more easy for three to protect than for two; when all are willing and are pledged to stand guard, there becomes no further need for the sentry. With the United States alone doing guard duty upon the banks of the canal, what is there to prevent any two warring powers from blockading the route? What is there, even to prevent their closing the way against American ships? The force of this contention by Mr. Blaine can be better appreciated in the fervency of patriotic sentiment, but logically it fails. As an argument for abrogation of that part of the Clayton-Bulwer treaty calling for international guarantee, it was of little force, for there is every reason to suppose that no single nation can perpetually maintain the freedom of an interoceanic ship canal.

Mr. Blaine's fear that France might gain entire control of the Panama Canal was without reasonable foundation. De Lesseps made no claim for his country's exclusive interests in the result of his labors. He himself demanded international agreement for the protection of the route; and had he not done so, or had France assumed a right to exclude all other nations from a share in its political management, it is certain that Great Britain would have protested as vigorously as the United States. Indeed, there is no reason to suppose,

judging from the attitude of the commercial powers toward the subject, that the other nations of Europe would have permitted France to control the Panama Canal to their disadvantage.

It is difficult to see, as contended by Mr. Blaine, wherein the Clayton-Bulwer treaty gives promise of British capital for the construction of the canal. English money had never been solicited for the purpose. Mr. Webster, as Secretary of State, two years after the ratification of the treaty, declared that the necessary means could easily be obtained in this country. There is no evidence to show that the United States ever expected to draw upon English sources for a proportion of the funds necessary for the building of the canal.

Lord Granville replied in two despatches, dated January 7 and 14, 1882. At the outset, he arraigned the principles upon which Mr. Blaine had founded his arguments as "novel in international law." Denying the charge of Great Britain's control of the Suez route, he hastened "cordially [to] concur in what is stated by Mr. Blaine as regards the unexampled development of the United States on the Pacific coast . . . but Her Majesty's Government cannot look upon it in the light of an unexpected event, or suppose that it was not within the view of the statesmen who were parties on either side of the Clayton-Bulwer treaty. The declarations of President Monroe and of his cabinet in 1823 and 1824 . . . show at least . . . twenty-six years anterior to the treaty . . . there was a clear prevision of the great future reserved to the Pacific coast. It is . . . an inadmissible contention that the regular and successful operation of causes so evident at the time . . . should be held to have completely altered the condition of affairs to the extent of vitiating the foundations of an agreement which cannot be supposed to have been concluded without careful thought and deliberation." Great Britain, as well as the United States, has important interests connected with the waterway between the Atlantic and Pacific oceans. Such a canal, he urged, "is a work which concerns not merely the United States or the

American continent, but the whole civilized world. . . . Her Majesty's Government are as anxious as that of the United States that, while all nations should enjoy their proper share in the benefits to be expected from the undertaking, no single country should acquire a predominating influence or control over such a means of communication." Its universal and unrestricted use should be secured upon an international basis. This, he reminded Mr. Blaine, was the attitude of the United States in the past, and to save all annoyance and trouble, and to subserve the best interests of all alike, this should be their attitude in the future.

To the historical objections presented by Mr. Blaine, Lord Granville replied at much greater length in his second despatch of January 14. The substance of the letter is condensed in its closing paragraph, which sets forth that the various differences which arose between the two governments out of the Clayton-Bulwer treaty, and to which Mr. Blaine refers, related, not to the general principles of the treaty, (neutralization, international control, etc.,) but to that portion of the instrument forbidding new acquisitions of territory in Central America. These old quarrels found their origin in allegations that Great Britain was violating the provisions of the treaty by acquiring Central American territory. This portion of the treaty Mr. Blaine does not now attack, but desires, on the contrary, to retain intact; indeed, it was in defence of those very principles of neutralization that the United States objected to Great Britain's movements in Central America. In his historical review, Mr. Blaine stops at the very point where the controversy should begin. In 1860, upon the conclusion of the three British treaties with the Central American States, the old disputes between England and the United States were entirely settled, and President Buchanan, in his annual message of that year, said: "The discordant constructions of the Clayton-Bulwer treaty between the two governments, which at different periods of the discussion bore a threatening aspect, have resulted in a final settlement entirely satisfactory to this government."

Here then was an estoppel to Mr. Blaine's "historical arguments."

The Garfield administration soon after coming to a tragic end, President Arthur's Secretary of State, Mr. Frelinghuysen, resumed the controversy with Lord Granville. His first letter upon the subject (to Mr. Lowell, May 8, 1882) is a state paper of considerable strength.

Mr. Frelinghuysen maintained that the construction of an isthmian canal, open to all ships, at all times, would expose our Western coast to attack, destroy our isolation, oblige us to improve our defences, increase our navy, and compel us, contrary to our traditions, to take an active interest in European affairs. The physical conformation of this continent is one of our greatest safeguards, and any change made in it might most injuriously affect the interests of the Republic; hence the severance of the isthmus must be effected in harmony with those interests. Relating to the canal, there is no conflict between American political claims and the material interests of other nations. The Panama Railroad and the Suez Canal, without any international pledges of neutrality, have remained open and in service during the most turbulent times. If no protectorate were found necessary for them, it can scarcely be required for the Isthmian Canal. He therefore considered it "unnecessary and unwise, through an invitation to the nations of the earth, to guarantee the neutrality of the transit of the isthmus, to give their navies a pretext for assembling in waters contiguous to our shores, and to possibly involve this republic in conflicts from which its natural position entitles it to be relieved." Such international agreements — calling for interference by force — are apt to breed dissension and trouble. In times of peace they are harmless and useless, and in times of war they often cannot be enforced. Besides this, such an agreement would lead to foreign intervention in American affairs, which the traditional policy of the United States would make it impossible to tolerate. A protectorate of European nations over the isthmus transit would be in conflict with the Monroe Doctrine.

The treaty had two primary objects, — the construction of the Nicaragua Canal, and the dispossession of Great Britain from her Central American settlements. To this end, the parties agreed not to exercise any dominion over, fortify, or colonize, Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America. Yet Great Britain exercises dominion over Belize or British Honduras, — an area equalling Massachusetts, Connecticut, and Rhode Island, — and the impression prevails that since 1850 Great Britain has considerably increased the region in Central America over which she assumes control. Such dominion seems inconsistent with the provisions of the treaty. At the time of the conclusion of the Clayton-Bulwer treaty, English dominion in Belize consisted merely in a privilege to cut wood and establish saw-mills in a territory established by metes and bounds. It was referred to by Sir Henry Bulwer in 1850, as a “settlement” at Honduras. His letter to Mr. Clayton, excepting this settlement and its dependencies from operation of the treaty, was made after the conclusion of same, and was unknown to the President and Senate. In 1859 Great Britain made a treaty with Guatemala, in which her “settlement” was referred to, as “Her Britannic Majesty’s settlements and possessions,” and the commissioners appointed to mark the boundaries discovered the British area to have greatly expanded. The United States never gave assent to this conversion of a British settlement into a British possession under full British sovereignty. “Under treaty of 1850, while it is binding, the United States have not the right to exercise dominion over or to colonize one foot of territory in Central America. Great Britain is under the same rigid restriction. And if Great Britain has violated and continues to violate that provision, the treaty is, of course, voidable at the pleasure of the United States.”

Referring then to Lord Granville’s mention of President Buchanan’s message of December 3, 1860, in which the executive expressed his entire satisfaction with the outcome of negotiations arising under the Clayton-Bulwer treaty, Mr. Frelinghuysen said: —

“It is well known that the parties to the Clayton-Bulwer treaty anticipated that a canal by the Nicaragua route was to be at once commenced. Under the assumption of a protectorate of Mosquito, British authority was at that time in actual and visible occupation of one end of the Nicaragua route, . . . and it was intended by this treaty to dispossess Great Britain of this occupation. This object was accomplished in 1859 and 1860 by treaties between Great Britain, Guatemala, Honduras, and Nicaragua. . . . It was to this adjustment, which was one of the prime objects of the treaty, and not to the colonization of British Honduras, that Mr. Buchanan alludes. . . .”

An ample review of the negotiations between Sir Henry Bulwer and Mr. Clayton, which led up to the treaty, was then given, in order to show that the primary object of the parties was to insure, at the earliest possible moment, the completion of the particular ship canal for which a concession had already been made by Nicaragua to citizens of the United States (August 29, 1849). It is to this particular canal, (Nicaragua Canal) Mr. Frelinghuysen urged, that all the provisions of the first seven articles of the Clayton-Bulwer treaty apply.

Coming then to the seventh and eighth articles of that instrument, which provide for the course of action to be followed by the two governments toward any other Central American scheme for connecting the oceans, Mr. Frelinghuysen insisted that reference was only made therein to such projects as were then in contemplation, *i.e.* at the time the treaty was signed. All that part of the treaty (Articles 1 to 7) relating to one particular canal (the Nicaragua Canal) had lapsed by failure to construct the canal to which it especially referred. The canal “now (1882) in question” was the *Panama* Canal, and the position of the United States in reference to that is determined by a convention between the United States and New Granada (United States of Colombia), concluded in 1846, and still in force. In this treaty, the United States is placed in the position of sole guarantor of the neutrality of any route across the Isthmus of Panama. The United States

protectorate is therefore exclusive in its character, and should Great Britain claim, under the Clayton-Bulwer treaty, a right to join the United States in the protection of this route, "the United States would submit that experience has shown that no such joint protectorate is requisite; that the Clayton-Bulwer treaty is subject to the provisions of the treaty of 1846," between the United States and Colombia.

Furthermore, the United States having successfully exercised her protectorate over the Panama Railroad route, for upward of thirty years, during the most turbulent times, Great Britain has no right, at this late date, to demand any share in the guarantee of any canal hereafter to be built across the isthmus.

In conclusion, Mr. Frelinghuysen maintained that both history and theory support him in his position against a joint protectorate with Great Britain over the Panama transit route, and finally that the United States cannot take part in extending an invitation to the powers of the world to cooperate with them upon the basis of the Clayton-Bulwer treaty; and that the United States "would look with disfavor upon any attempt at a concert of political action by other powers in that direction."

This letter of Mr. Frelinghuysen is, perhaps, the best exposition of the American case that has ever been made for the abrogation or modification of the Clayton-Bulwer treaty. The arguments are set forth with great earnestness and much plausibility; but despite the elaborate preparation of the brief, it was completely traversed by Lord Granville's reply to Mr. West (December 30, 1882).

To offset Mr. Frelinghuysen's contention that the Clayton-Bulwer treaty had reference only to the interoceanic routes then in contemplation, Lord Granville needed but to offer in quotation the treaty itself, which declared "that neither the one nor the other of the high contracting parties would ever obtain or maintain for itself any exclusive control over *any ship canal which might be constructed* between the Atlantic and Pacific Oceans, by way of the river San Juan." Having then declared for a *principle*, as well as for the accom-

plishment of a particular object, the parties agreed "to extend their protection by treaty stipulations to *any other* practicable communications, whether by canal or railroad, across the isthmus which connects North and South America, and especially to the interoceanic communications, should the same prove to be practicable, whether by canal or railway, which are now proposed to be established by way of Tehuantepec or Panama." The use of the words "*general principle*" and "*especially*," in reference to Tehuantepec and Panama, seem to remove all doubt as to the construction of the treaty. Granville's position was still further strengthened by the general acceptance of this construction of the treaty in the United States for many years following its ratification.

General Cass, while Secretary of State in 1857, had asserted to Lord Napier that "the United States demanded no exclusive privileges in the interoceanic passages of the isthmus." All of the treaties made since 1850, by Great Britain and the United States with Central American states, acknowledged the principle of joint protection. From one of these American treaties (that of June 21, 1867, with Nicaragua), Lord Granville called attention to the fact that the United States not only "agreed to extend their protection to all such routes, guarantees," etc., but it did further "agree to employ their influence with other nations to induce them to guarantee such neutrality and protection." Therefore, as the United States had seen fit to pledge itself to the carrying out of that "general principle" established by the Clayton-Bulwer treaty and opposed to all ideas of exclusive control, by treaties since made, they could not now consistently fall back upon the Colombian treaty of 1848, as giving them exclusive rights upon the isthmus.

It was to Mr. Frelinghuysen's contention that certain acts of Great Britain, in violation of the terms of the Clayton-Bulwer treaty, had voided the treaty itself, and liberated the United States from its operations, that Granville especially turned his attention. These alleged acts on the part of Great Britain, it will be recalled, were the conversion of a more restricted right of settlement in Honduras to a full-

fledged colony, and to the unlawful extensions of the boundary of this British possession. Lord Granville furnished an historical account of Belize, showing that while originally the occupation of this territory by Englishmen was maintained under the sovereign laws of Spain, yet by conquest it had subsequently become English territory, as acknowledged by Spain, and later by the Central American states. All these acts, which secured to Great Britain the sovereignty over her Central American territory, had been committed before 1850. In that year, and while the Clayton-Bulwer treaty was awaiting ratification, Mr. Clayton, the Secretary of State, acknowledged this British possession. Finally, to close the discussion, Lord Granville pointed to the postal convention of 1869, between Great Britain and the United States, which formally recognized British Honduras as a "colony" of Great Britain.

Mr. Frelinghuysen returned to the discussion, and the controversy with Lord Granville was urged along, though with signs of diminishing vigor on the part of the United States. Nothing new was developed in what might be termed this supplementary correspondence, — the old lines of argument were preserved, and the same facts reiterated. The end of the debate was only brought about when the line of argument returned once more to Mr. Frelinghuysen's former charge of Great Britain's bad faith in creating a "colony" in Honduras since the ratification of the Clayton-Bulwer treaty. Lord Granville's curt reply to this repeated assertion was simply that the United States, through its official mouthpiece, had expressed its satisfaction and recognized English rights in Honduras. The Monroe Doctrine, which had crept into the discussion, he dismissed with a query, — Why had it not applied during the past thirty years? If the defenders of the Monroe Doctrine could accept the Clayton-Bulwer treaty in 1850, they could equally recognize it in 1883.

The only effect of this two years' controversy was to establish all the more firmly the validity of the Clayton-Bulwer treaty. Whatever ills its provisions may have imposed upon the United States, there was no escape from the treaty through the avenues of logic or by recourse to

legal arguments. The merits of the case belonged to Great Britain. There was no position which either Mr. Blaine or Mr. Frelinghuysen had taken, which was not disproved by admissions elsewhere made; at every turn there appeared to be an estoppel.

The reason for this utter failure of American statesmen to free the nation from a burdensome treaty is at once clear. For twenty-five years after the conclusion of the treaty the principles embodied therein had been accepted by the United States as sound and wise. On such a basis other treaties had been negotiated, authoritative endorsements had been made, and the whole course and tenor of the nation's thought and attitude toward the question had apparently built an impregnable bulwark about the treaty itself, as it had consecrated the principles for which it stood. Whenever the Clayton-Bulwer treaty shall be attacked, another diplomatic victory will be given to British statesmen, and another defeat scored at home. The treaty is not void, and cannot be avoided upon purely legal ground.

If the conviction which has apparently seized upon the public mind that full American control of any Central American canal is necessary to the safety and welfare of the United States, and must be a condition of any waterway to be constructed, and if this conviction persists, the time will soon come when the United States will feel itself justified in adopting the only rational plan for dissolving the obligations of the Clayton-Bulwer treaty. That plan is, — boldly to proclaim its abrogation and take the consequences of a breach of faith, whatever those consequences may prove to be. One way short of so radical a procedure would be to offer to Great Britain some manner of compensation for the relinquishment of her rights under the treaty. But the assumption should not be made that the United States is so great a sufferer under the provisions of that treaty. The subject will be discussed under the title "Neutralization of the Canal."

V

The results of the Blaine-Frelinghuysen-Granville controversy greatly displeased the executive; it was unsatisfactory to Congress; it was regarded as a humiliating defeat by the country at large. The conviction was general in Washington that the United States had been duped in 1850, and had been afterward seduced into the damaging admissions, which now arose like ghosts, to frighten the nation into the observance of a self-sacrificing compact. Many believed it to be an exaggerated sense of virtue that bound the nation to the fulfilment of those agreements. Technically, perhaps, it was thought, Great Britain's position in Belize was justified; but honestly, as the human heart appreciates the word, it was not; Granville's arguments did not seem to ring quite true.

But especially discontented with the outcome of this correspondence was a numerous group of Congressmen, who persistently asserted that the salvation of the United States depended upon the immediate construction of an isthmian canal that should be entirely American in every particular. President Arthur himself had been of this opinion, and he at once entered upon the task of putting his convictions into execution, notwithstanding the unfavorable outcome of the recent diplomatic encounter with Great Britain. Having convinced himself that the Panama Canal (then in process of construction) could never come under the full American control, which he felt to be a necessary condition to his country's safety, he determined that the United States should construct a canal of its own in Nicaragua. Mr. Frelinghuysen prepared the way by concluding a new treaty with Señor Zavala, Special Envoy from Nicaragua (1884).

This treaty was made in total disregard of the convention of 1850. It established a perpetual alliance between the United States and Nicaragua; the United States should construct a canal and then maintain an exclusive control over it. A strip of territory upon either side of the route was transferred to the United States in fee simple.

Nicaragua's territorial integrity was guaranteed, and the United States placed itself in the position of protector of the smaller republic.

It may readily be surmised that the ratification of this treaty would certainly have reopened the Clayton-Bulwer controversy. It would necessarily have provoked a contest between the Monroe Doctrine and the treaty obligations of the United States. The Senate, however, was unwilling to incur the risk of such a debate, and a vote of thirty-two yeas to twenty-three nays left the treaty unconfirmed. A reconsideration was then ordered, and the matter, still unsettled, continued over into the Cleveland administration.

The new Democratic President entered his office with ideas on this question differing radically from those of his predecessor, or rather from those of his last four predecessors. In his first message of December 8, 1885, Mr. Cleveland took occasion to make public these views. Referring to the Frelinghuysen-Zavala treaty, which he had previously withdrawn from the Senate, he said:—

My immediate predecessor caused to be negotiated with Nicaragua a treaty for the construction, by and at the sole cost of the United States, of a canal through Nicaragua territory, and laid it before the Senate. Pending the action of that body thereon, I withdrew the treaty for re-examination. Attentive consideration of its provisions leads me to withhold it from re-submission to the Senate.

Maintaining, as I do, the tenets of a line of precedents from Washington's day, which proscribe entangling alliances with foreign States, I do not favor a policy of acquisition of new and distant territory or the incorporation of remote interests with our own.

* * * * *

I am unable to recommend propositions involving paramount privileges of ownership or right outside of our own territory, when coupled with absolute and unlimited engagements to defend the territorial integrity of the State where such interests lie. While the general project of connecting the two oceans by means of a canal is to be encouraged, I am of opinion that any scheme to that end to be considered with favor should be free from the features alluded to. . . .

Whatever highway may be constructed across the barrier dividing the two greatest maritime areas of the world must be for the world's benefit—a trust for mankind, to be removed from the chance of domination by any single power, nor become a point of invitation for hostilities or a prize for warlike ambition. An engagement combining the construction, ownership, and operation of such a work by this government, with an offensive and defensive alliance for its protection, with the foreign state whose responsibilities and rights we would share is, in my judgment, inconsistent with such dedication to universal and neutral use, and would, moreover, entail measures for its realization beyond the scope of our national polity or present means.

The lapse of years has abundantly confirmed the wisdom and foresight of those earlier Administrations which, long before the conditions of maritime intercourse were changed and enlarged by the progress of the age, proclaimed the vital need of interoceanic transit across the American Isthmus and consecrated it in advance to the common use of mankind, by their positive declarations and through the formal obligation of treaties. Toward such realization, the efforts of my Administration will be applied, ever bearing in mind the principles on which it must rest, and which were declared in no uncertain tones by Mr. Cass, who, while Secretary of State, in 1858, announced that “what the United States want in Central America, next to the happiness of its people, is the security and neutrality of the interoceanic routes which lead through it.”

The attitude of the executive throughout both of Mr. Cleveland's administrations served to check the attempts to repudiate the Clayton-Bulwer treaty which were demanded from influential sources; indeed, the earnest efforts of Mr. Blaine and Mr. Frelinghuysen to abrogate that convention have never since been revived, although the Clayton-Bulwer treaty has never ceased to be regarded in other than a most unfavorable light. On two occasions, indeed, since 1883, the provisions of the treaty have been invoked in such a manner as to indicate our renewed adherence to it.

It will be recalled that by the treaty of Managua, between Great Britain and Nicaragua, concluded by Sir William Ouseley in 1860, the former abandoned her protectorate over Mosquitia — that strip of territory lying along the gulf coast

of Nicaragua. By the terms of this instrument, Nicaragua had guaranteed to pay a certain indemnity to the Mosquito Indians. Probably inspired by the hope that the United States would support her against any British quarrel she might stumble into, Nicaragua persistently refused to pay the promised yearly stipend to the Indians; the latter clamored for their pay, and called upon Great Britain to enforce her treaty rights. Accordingly, in 1880, a demand to this end was made upon Nicaragua; but in consequence of the latter's continued refusal to abide by the terms of her contract, the matter in dispute between the two nations was submitted to the Emperor of Austria for arbitration. At first the administration felt that the United States had been slighted, and that the Monroe Doctrine had been violated as well. It appeared to be a clear case of "foreign interference" on the Western continent; but for several reasons the President believed an American protest would be ill advised. Great Britain was clearly acting within her own rights as a party to a treaty, and the United States had fully approved of the convention when first concluded (Buchanan Message, 1860). Although a foreign tribunal of arbitration threatened the renewal of British claims in Mosquitia, there was simply no help for it, except in the use of force. As apprehended, the arbitration proceedings (July, 1881) resulted in the re-establishment of the English protectorate over the Mosquito reservation; but consolation was sought by the Senate in reaffirming the principles of the Monroe Doctrine. The episode called forth no direct protest from either Mr. Blaine or Mr. Frelinghuysen.

The commercial and moral effect of the restoration of British influence carrying enlightened Anglo-Saxon rule along the Mosquito shore, was almost magical. Immigration set in, business revived, and the dilapidated village of Bluefields became a commercial centre where British and American capital sought investment. A large fruit trade was opened with New Orleans, and American capital began the exploitation of Mosquito resources upon a comparatively large scale. This rapid development of Mosquitia operated adversely to

Nicaragua's prospects in the race for wealth. Jealousies soon arose, and Nicaragua appealed to the United States to protect her in her efforts to regain control of the Indian reservation. Acts were committed by Nicaraguan officials in contempt of Mosquito and English authority at Bluefields and elsewhere within the limits of the reservation. A crisis was reached in 1888, which renewed the old controversy, in which the United States again reprimanded Great Britain for violation of the Clayton-Bulwer treaty. Mr. Bayard, the Secretary of State, opened the new diplomatic skirmish by a sharp remonstrance. His letter of November 23, 1888, to Mr. Phelps, American Minister at London, took the position that a continuance of the protectorate of Great Britain over the Mosquito territory would be regarded by the United States as conflicting with the provisions of the Clayton-Bulwer treaty. He maintained that Great Britain was using her Managua treaty as a mere cloak to shield her in the continued exercise of sovereignty along the Central American coast; that the United States, being no party to the Austrian arbitration proceedings, was not bound nor committed to an admission of British right of interference between Nicaragua and the Indians within her borders; he therefore insisted that the United States was free to oppose a British protectorate in Central America, as being wholly inconsistent with her general views and political policy.

Mr. Bayard's appeal was to the Monroe Doctrine quite as much as to the Clayton-Bulwer treaty; but his somewhat elaborate argument had the fatal weakness of many American state papers — the presentation of a political theory or policy against generally accepted tenets of international law. Whatever objections the United States might interpose to British actions, they were rendered nugatory by the simple fact that Great Britain was acting consistently within the limits of a treaty which the United States herself had sanctioned; and finally, she was clearly justified under the award of a tribunal assented to by Nicaragua.

Lord Salisbury replied to Mr. Bayard some months later (March 7, 1889). He denied any English claim of sovereignty

over the Mosquito Indians, and asked only for the Nicaraguan observance of the Managua treaty to offer Great Britain the opportunity she desired to withdraw from the affairs of the Indian reservation.

For some years Mosquitia continued to prosper under British rule. The increasing number of American immigrants to Bluefields contributed a decided American flavor to Mosquito politics. Although British influence remained paramount, this fact was more than ever manifested in 1892, when the Mosquito authorities placed a duty upon importations received at Bluefields in excess of specified rates previously fixed by treaty between Nicaragua and the United States, — Nicaragua having become unable to abide by her tariff pledges to the United States, as her own sovereignty along the coast had been entirely suspended. The Mosquito tariff act presented an auspicious occasion to Nicaragua to reopen the old controversy with Great Britain; a correspondence ensued, in which the United States was necessarily soon involved. In a letter to the American Minister in London, the Secretary of State, Mr. Foster, declared with great emphasis, that Nicaragua's sovereignty over Mosquitia had not been impaired; her concessions to Great Britain being, in their nature, tribal and not territorial. "A supposititious Mosquitia is not to be arbitrarily substituted for the territory allotted to and reserved for the residence of the Mosquito Indians by the sovereign." "The United States cannot look with favor upon any attempt, however indirect, on the part of Great Britain to render illusory the sovereignty of the Republic of Nicaragua over the Mosquito Indians and the territory reserved for their dwelling." A lengthy discussion might have resulted, which would no doubt have brought forth much learning upon the subject of suzerain rights, had not more stirring events in Mosquitia suddenly diverted attention, from academic debates between London and Washington, to the consideration of an immediate military interference on the spot. In the usual course of Central American history, Nicaragua and Honduras, along with most of the adjoining states, became involved in war.

Mosquitia remained neutral, which in the estimation of Nicaragua, claiming sovereignty over the reservation, was nothing less than disloyalty. Accordingly Nicaraguan troops swept into the reservation, seized and occupied Bluefields (February, 1894) against the combined protests of the native Indian Chief, Clarence, and his political supporter, the British Consul. The U. S. S. *Kearsarge* was wrecked while hastening to the scene; but upon the arrival of a British war vessel, and the landing of marines, the Nicaraguan troops retired, leaving, however, a Nicaraguan commissioner in the hands of the foreigners at Bluefields. This sudden flurry at arms had a sobering effect upon the English authorities, who, since the Austrian arbitration, had been inclined to disregard *in toto* Nicaraguan claims to sovereignty over Mosquitia. The Nicaraguan commissioner was therefore accepted as a factor in a new provisional government formed for Mosquitia. The infusion of the Nicaraguan element into the governmental affairs of the reservation soon brought discontent among the foreigners, which resulted in a nocturnal *coup d'état* overthrowing the provisional government and again placing Chief Clarence in control. In consequence of this, Nicaraguan troops soon appeared near Bluefields, in fighting array, and demanded the restoration of the Nicaraguan authorities.

Such was the crisis when the United States fully awoke to the importance of events taking place in Central America. Explanations were demanded; the Clayton-Bulwer treaty was carefully reread at the State Department; American citizens in Bluefields were cautioned to take no part in acts violating Nicaraguan sovereignty in Mosquitia, and Great Britain was asked to withdraw her troops. England yielded, the marines departed, and a deplorable condition of political confusion resulted in Mosquitia. A resumption of Nicaraguan sovereignty in Bluefields, with its attendant abuses and extortions, soon brought about a second *coup d'état*, in which American, English, and Indians all combined to cast out the intolerable rule of Nicaragua. The United States was thus placed in the awkward position of favoring the legitimate



rule of Nicaragua over Mosquitia, which the business interests of American citizens there resident had twice prompted them to overthrow.

The Indian Chief (Clarence) was scarcely established in office, with a "council of state" of American and British citizens to aid him in directing the affairs of Mosquitia, when the Nicaraguan army again appeared. England having already abandoned hope for the fulfilment of her Mosquito projects, held aloof. The United States, to be consistent, encouraged Nicaragua. Bluefields was taken, Clarence fled to Jamaica, all American and British subjects including the British Consul, who were suspected of complicity in the last Mosquito uprising, were seized, and with scarcely a pretence of trial, were summarily banished.

Through the exercise of an unusual amount of tact by the United States authorities, Nicaragua relented, and pardoned the exiles, many of whom returned to Bluefields to resume their former occupations; but further efforts to maintain a Mosquito nation were seen by all parties to be useless, and in November, 1894, the Indians voluntarily declared for incorporation into Nicaragua. "Mosquitia" became the Nicaraguan state of "Zelaya," with which change the last remnant of Great Britain's grasp upon it faded.

England's demand for indemnity growing out of the banishment of her Consul, Mr. Hatch, resulted in the seizure of the Nicaraguan port of Corinto (April, 1895). The event caused some excitement in the United States, but it marked the final episode of British interference in Nicaragua. The claim was paid, and the British warships sailed away, leaving behind, for the first time in a century, no shadow of English authority in Nicaragua.

Since 1895 a number of American citizens have continued under Nicaraguan authority to live and do business in Bluefields; but frequent signs of their irritation have come to the surface, indicating their disrespect for a governmental system that thrives upon revolution and permits many deeds of injustice under excuse of military necessity. Could Great Britain be induced to sanction the abrogation of the Clayton-Bulwer

treaty and free the United States from the ban of territorial expansion in Central America, it is probable that, sooner or later, a fourth *coup d'état* in Bluefields might transfer the State of Zelaya to the United States. Such a consummation would be pleasing to those members of Congress who favor the immediate construction of the proposed canal as a national undertaking.

VI

As already noted, the views of President Cleveland, touching the political status of the Central American Canal, being more in accord with those entertained by the country previous to 1870, precluded the possibility of any definite action looking to the abrogation of the Clayton-Bulwer treaty under his administrations. From 1885 to 1889 and from 1893 to 1897 no renewal of Mr. Blaine's and Mr. Frelinghuysen's efforts in that direction were undertaken, notwithstanding the fact that the treaty received several denunciations in Congress, and public opinion throughout the country was becoming more and more fixed against the toleration of foreign influence in the management of the canal.

President McKinley at first gave to the public no hint of his own position in the matter; but in his second annual message (December 1898), moved by the new conditions which had arisen within the short space of a year, he recorded himself a champion of the doctrine of an "American Canal." He said in reference to the Nicaraguan Canal:—"The construction of such a maritime highway is now more than ever indispensable to that intimate and ready intercommunication between our Eastern and Western seaboard demanded by the annexing of the Hawaiian Islands and the prospective expansion of our influence and commerce in the Pacific, and that our national policy now more imperatively than ever calls for its control by this government, are propositions which I doubt not the Congress will duly appreciate and wisely act upon."

Thus President McKinley came to endorse the ultra-American principle of the political status of a Central American

canal as supported by Presidents Hayes, Garfield, Arthur, and Harrison. The position of the executive was concurred in by Congress, and approved by the country at large.

Events growing out of the Spanish War went far to convince a conservative minority, who doubted the wisdom or expediency of abrogating the Clayton-Bulwer treaty, that they had probably erred in judgment. The long voyage of the *Oregon* from San Francisco to Santiago, at a time of national peril, furnished the only proof still lacking to demonstrate the necessity of a canal connecting the oceans which should be under the military protection of the United States Government. The expansion policy of the United States in the West Indies, and the acquisition of a Pacific empire with its promises of trade and of a greatly enlarged American merchant marine, further stimulated the desire of the country for a ship canal under American control. Shipping subsidies were under discussion in the Senate; a greatly increased navy was called for to protect distant possessions; new and unlooked-for conditions suddenly transformed the nation into an alert and aggressive power. With these changes of national sentiment, public interest became more than ever aroused in the completion of the Nicaraguan Canal. Unanimous committee reports in both houses of Congress favored prompt construction by the United States Government; a growing disposition in Congress manifested itself for the acquisition of a strip of Nicaraguan and Costa Rican territory, in order that the canal might lie wholly within American soil. Resolutions of Congress again declared the Clayton-Bulwer treaty to be void. The press was unsparing in its attacks upon the old compact, and never before had all parties so persistently clamored for the immediate undertaking of the work upon a national basis, although in defiance of treaty obligations.

In January, 1900, a rumor became current that negotiations were in progress to conclude a new treaty with Great Britain relative to the ship canal. Knowing the sentiments of the administration on the subject, the proponents and friends of the canal rejoiced in the prospect of final delivery from the

diplomatic entanglements which for fifty years had prevented the realization of their hopes. The people at last concluded that the Clayton-Bulwer treaty was to be abandoned. A congratulatory tone pervaded the press comments, while the appearance of the new treaty was eagerly awaited. Surmises were rife that Great Britain, having encountered evil fortune in South Africa, and being in danger of European intervention, had consented to withdraw her Central American pretensions for the sake of assured American friendship. It was also suspected that in order to humor Canada, England might ask of the United States concessions in Alaska, and give in return all that was demanded relative to the canal. On February 5, the Hay-Pauncefote Convention was signed, sent to the Senate, read and immediately referred to the Committee on Foreign Relations. It was entitled, "A Convention between the United States and Great Britain to Facilitate the Construction of a Ship Canal to Connect the Atlantic and Pacific Oceans, and to Remove any Objection which Might Arise out of the Convention Commonly Called the Clayton-Bulwer Treaty." The agreement called for the construction of the canal under the auspices of the United States Government, to be done at its own expense and to carry with it the enjoyment of all the rights incident to such construction. The "General Principles" of neutralization as established in the eighth article of the Clayton-Bulwer treaty were to be preserved, and to that purpose a set of rules analogous to those contained in the Constantinople treaty (October 29, 1888) were adopted. These rules called for — (a) freedom of transit in times of war or peace to all vessels of all nations; (b) a freedom from blockade; (c) a code of procedure for war vessels entering and leaving the canal; (d) no fortifications along the route. The high contracting parties should call upon the other powers to unite with them in guaranteeing neutrality of the canal.

When the text of the convention was made public a few days later, it bewildered the country. Those who endorsed the principles of neutralization, for which the new treaty stood, were amazed, because the administration had already

pledged itself to quite the opposite theory in reference to the canal. All others who read the words of the treaty were no less disappointed than astonished. The Clayton-Bulwer treaty was not abrogated in the instrument, as they thought would be the case; on the contrary, its principles were reaffirmed. The new agreement did not abandon the old; it supplemented and enlarged upon it. Those features of the old convention relating to the neutralization of a canal, which had been denounced for so many years as objectionable, were emphasized and perpetuated in the new instrument. The disabilities placed upon the United States by the old convention, in the matter of acquisition of Central American territory, not being expressly removed, were, in consequence, recognized by the new. And finally and above all other considerations, the despised Clayton-Bulwer treaty was acknowledged to be binding and in force, — creating thereby a new and effective estoppel to future efforts seeking British consent to its abrogation.

In the committee-room the following amendment to the treaty was appended to the instrument by Senator Davis: —

It is agreed, however, that none of the immediately foregoing conditions and stipulations in sections, Nos. 1, 2, 3, 4, 5, of this article, shall apply to measures which the United States may find it necessary to take, for securing by its own forces the defense of the United States and the maintenance of public order.

This amendatory clause was based upon a provision in the Constantinople treaty of 1888 touching the neutralization of the Suez Canal, and was meant by Senator Davis to supply an omission which had occurred through "oversight" of the negotiators. It will be seen that the Davis amendment at once robbed the instrument of its main purpose — the neutralization of the route, — and, if adopted, would virtually nullify the treaty.

The appearance of the Hay-Pauncefote agreement brought the subject of neutralization of the canal to a final and definite issue, and its acceptance or rejection by the Senate would indicate the course the United States must finally adopt. The alternatives were: —

- (1) A canal neutralized to the use of the world's commerce by a joint guarantee of all nations, and
- (2) A national waterway belonging to the United States, and over which it exercises full control.

The sudden presentation of this issue in so positive a form brought forth many virulent criticisms by the more radical advocates of American exclusiveness in a canal policy. The apparent change in the President's sentiments from 1898 to 1900 on the subject of canal equalization gave to the opponents of the Hay-Pauncefote treaty the handle of a whip wherewith to flay the administration. It was inevitable that the "canal question" should develop a political aspect, and before the close of the session it began to accommodate itself to party needs. The Republican supporters of the President were openly accused of seeking to perpetuate a vicious anti-American compact. Railroad interests, the Trusts, and a snobbish catering to British policies were alleged as the causes. In the House, the Hepburn Bill, which wholly ignored the Clayton-Bulwer treaty, and was in direct opposition to the principles of the agreement awaiting confirmation in the Senate, was passed by a large majority of votes to the discredit of American methods of negotiation with foreign nations.

The 1st Session of the 51st Congress came to a hurried adjournment in early June without having ratified the Hay-Pauncefote treaty or even having acted upon the Davis amendment; and the matter was postponed to the following December. On account of the delay, the period for ratification of the treaty was extended by mutual agreement to March 4, 1901.

Both party platforms, adopted in the National Conventions immediately after the adjournment of Congress, endorsed the policy of absolute and exclusive American control of the canal. The acceptance of such a plank in the Republican platform at Philadelphia could only be regarded as a party expression of disapproval of the position assumed by the executive toward a neutralized waterway connecting the oceans. This protest from the party, which had been presum-

ably won over to a neutral canal, and which was supposedly backing the ratification of the treaty, greatly lessened its chances for adoption by the Senate the following session.

An unusual degree of interest in canal legislation was manifested at the opening of Congress on December 4, 1900. Two important events were looked forward to, — the appearance of the canal commission's report¹ and an early vote upon the Hay-Pauncefote treaty. The preliminary report of the Isthmian Canal Commission was submitted to Congress with the President's message. It contained in a condensed form the outcome of one and a half years' exhaustive study of all the possible canal routes across Central America. The advantages or disadvantages of these various routes were considered from their physical, political, and strategic points of view. The probable costs of construction were estimated, and the location of each possible route with reference to full and complete ownership by the United States was investigated.

Basing their calculations upon the statistics of entrances and clearances at European, North and South American ports, the commission came to the conclusion that the freight tonnage passing through the canal would be sufficient to warrant its commercial success. To meet the requirements of modern sea-going vessels, in view of their constantly increasing size, the report recommended a greater depth and width of channel than ever before proposed. The uniform low water depth of 35 feet, with a bottom width of 150 feet, together with a double system of locks, furnished a more extravagant basis for estimates of cost than had ever before been considered.

Abandoning all other routes as impracticable, the commission found the probable cost of the Nicaragua and Panama canals each to be about \$200,000,000. In the case of the latter, the estimated cost of completion was placed at \$142,342,579, but this amount, added to the sum required to buy out the French company already in the field, would make the final cost of the two routes about equal.

¹ For creation of this commission, see page 94.

A careful comparison of the advantages offered by these two waterways led the commission into a close examination of the rights and privileges owned under franchises by the various canal companies interested in Central America. All such franchises of course stood directly in the way of the government undertaking the construction as a national project. The report concludes as follows:—

“1. The estimated cost of building the Nicaragua Canal is about \$58,000,000 more than that of completing the Panama Canal, leaving out the cost of acquiring the latter property. This measures the difference in the magnitude of the obstacles to be overcome in the actual construction of the two canals, and covers all physical considerations, such as the greater or less height of dams, the greater or less depth of cuts, the presence or absence of natural harbors, the presence or absence of a railroad, the exemption from or liability to disease, and the amount of work remaining to be done.

“The New Panama Canal Company has shown no disposition to sell its property to the United States. Should that company be able and willing to sell, there is reason to believe that the price would not be such as would make the total cost to the United States less than that of the Nicaragua Canal.

“2. The Panama Canal, after completion, would be shorter, have fewer locks and less curvature than the Nicaragua Canal. The measure of these advantages is the time required for a vessel to pass through, which is estimated for an average ship at twelve hours for Panama and thirty-three hours for Nicaragua.

“On the other hand, the distance from San Francisco to New York is 377 miles, to New Orleans 579 miles, and to Liverpool 386 miles greater via Panama than via Nicaragua. The time required to pass over these distances being greater than the difference in the time of transit through the canals, the Nicaragua line, after completion, would be somewhat the more advantageous of the two to the United States, notwithstanding the greater cost of maintaining the longer canal.

“3. The Government of Colombia, in which lies the Panama Canal, has granted an exclusive concession, which still has many years to run. It is not free to grant the necessary rights to the United States, except upon condition that an agreement be reached with the New Panama Canal Company. The commission believes that such agreement is impracticable. So far as can be ascertained, the company is not willing to sell its franchise, but it will allow the United States to become the owner of part of its stock. The commission considers such an arrangement inadmissible.

“The Governments of Nicaragua and Costa Rica, on the other hand, are untrammelled by concessions and are free to grant to the United States such privileges as may be mutually agreed upon.”

And the report in conclusion says:—

“In view of all the facts, and particularly in view of all the difficulties of obtaining the necessary rights, privileges, and franchises on the Panama route, and assuming that Nicaragua and Costa Rica recognize the value of the canal to themselves, and are prepared to grant concessions on terms which are reasonable and acceptable to the United States, the commission is of the opinion that ‘the most practicable and feasible route for’ an isthmian canal to be ‘under the control, management, and ownership of the United States’ is that known as the Nicaragua route.”

The report, being so thoroughly in accord with the established American preference for the Nicaragua route, gave great satisfaction. The character and ability of the commissioners and the thoroughness of their investigations have no doubt settled for all time the choice of routes. The field is clear in Nicaragua, the concessionary companies have been disposed of, and, with abundant means in the Treasury and popular favor to hasten the consummation of the project, there remains but one obstacle to postpone or defeat the undertaking. That obstacle is the Clayton-Bulwer treaty.

Soon after the convening of Congress in December 1900,

the Hay-Pauncefote treaty was called up for consideration, and for some days the Senate in executive session considered the adoption of the Davis amendment, along with numerous other amendatory clauses offered by various senators. The Davis amendment was agreed to on December 13 (65 to 17),—a clause which, as already shown (p. 170), completely transformed the character and purpose of the treaty. On December 20, two additional amendments presented by Senator Foraker were adopted. One of these consisted of the insertion of the words "which convention is hereby superseded," just after the words "Clayton-Bulwer Convention," in the second article of the instrument. The second amendment provided for striking out the entire third article of the convention, which abandoned article had called upon the parties to bring the convention to the notice of the other powers, and to invite them to adhere to it.

The ratification of the treaty so amended by the Senate took place the same day (December 20, 1900), and the instrument was immediately returned to the President for delivery to Lord Pauncefote.

As the treaty now stands, it is virtually a compromise between absolute neutralization and complete American control. It provides for the construction of the route as a purely American project under the auspices of the government, and gives to the government full management of the waterway, the fixing of tolls, etc. The "neutralization" of the route is then effected, so far as the two powers concerned are able to guarantee its neutralization. It shall be open in time of war as in time of peace to all vessels of all nations, without discrimination, save when there is war against the United States; then the United States may take such measures as it may find necessary to protect itself, even to the closing of the canal against the vessels of the enemy. This reservation of course defeats the absolute neutrality of the route, and the denial of the rights of the other great powers to cooperate in such a guarantee also removes the canal from the class of neutralized waters. Should Great Britain decide to ratify the treaty as already accepted by the Senate, the status of the

Nicaragua Canal would be that of a private waterway, with provisions, however, relating to its control, which give to it the semblance of a neutralized channel.¹

VII

The "Canal question" involves three sets of problems, all of which call for definite solution before the actual work of excavation shall begin. These problems relate, first, to the physical features of the undertaking and its cost; second, to its commercial aspects and probable value to the United States; and third, to the political status of the waterway—in other words, shall it be controlled by the United States alone, or shall it be neutralized by common consent of all nations? These three questions are of paramount importance.

1. To the first of these questions (the engineering features and cost), much attention has already been given. It may be assumed that reasonably correct estimates have been made by the United States Government through the exhaustive researches of its recently appointed scientific commissions. The civil engineer and the geologist are enabled to base their calculations upon actual facts; with the utmost precision they have measured the amount of earth to be removed; they have ascertained the hardness of rock to be encountered, and have probed the underlying strata to great depths with a view of obtaining a perfect knowledge of their character. The water-levels of the lakes and rivers have been accurately measured, and the most advantageous sites for dams and locks have been located. The harbors have been sounded, and their approaches most carefully studied. From the engineer's standpoint, then, the problem has already been solved. The conclusions are definite, and the Nicaraguan Canal is beyond all doubt a physical possibility.

In so far as it is possible to compute the cost of so gigantic an enterprise, this has also been calculated. It is true that these estimates vary, yet their differences are not discouragingly great. The most expensive of them all in no way

¹ Great Britain declined to accept the treaty as amended.

removes the undertaking from the limits of a financial possibility. The last phase of the problem connected with the physical aspects of canal construction relates to the choice of routes. This has been narrowed down to Panama and Nicaragua. It was the chief object of the last isthmian commission, which has already submitted its preliminary report, to make a final selection. American preference has so long inclined toward the completion of the latter route, that the adoption of the other is extremely unlikely; however, in case of any future change of sentiment to Panama, the physical features of that route have been as thoroughly investigated, and its feasibility equally demonstrated.

2. The second class of considerations involves the commercial aspects of the proposed route, — Will it pay? This feature of the canal question has perhaps been too little considered. The people of the United States have been rather inclined to assume that so splendid a triumph of engineering science must surely receive the reward of commercial success; and for proof of this, the satisfactory earnings of the Suez Canal have been offered in evidence. The contemplation of huge enterprises affects the mind somewhat after the manner of wine, and care should be taken lest the splendor of achievement shall dim the judgment. It must be borne in mind that ships follow the shortest and best routes, and that freight seeks the cheapest highways. It should be noted that the Nicaraguan Canal does not furnish the shortest route from New York to the Philippines, nor from the ports of China and the East Indies to London or New York; the fact must also be considered that the Suez route offers greater inducements to steam vessels in the way of coaling stations and shorter laps between ports.

Again, the five competing railroad systems across the continent of North America have so reduced the freight rates in the last fifteen years that assertion has been frequently made, if not thoroughly proved, that any all-water route from the Pacific to the Atlantic coasts cannot compete with the all-rail routes. The products of the Pacific slope which would have to be shipped first by rail to the coast and then trans-

shipped to a vessel, might be enabled to reach their Atlantic destination at less cost by the all-rail journey. Indeed, when railroads have come into direct competition with water routes, the latter have often declined in commercial importance. The canal and river systems of the United States, once the commercial highways of the nation, have, in many instances, become virtually abandoned in the presence of competing railways.

On the other hand, there is a great unknown quantity of trade that may be promoted by this "marriage of the oceans." With the Suez isthmus already pierced, there remains but the breaking of the Central American barrier to complete an open road to vessels around the world in a comparatively straight course. How far the realization of this prospect, so pleasing to the imagination, is likely to prove commercially successful, should be the subject of thorough, accurate, and scientific investigation. An original outlay of two hundred millions is too great a sum to be hazarded without at least a fair promise of return, — a return that is susceptible of demonstration by better evidence than mere conjecture or sentiment.

The commercial aspect of the question is somewhat neutralized, if not overshadowed, by military considerations. If the canal is necessary for national defence, its probable success or failure, as a commercial venture, is of little relative importance. The original cost and the yearly outlay thereafter would be charged to the legitimate expense column. However, estimates of the strategic value of the canal to the United States involve inquiries which come more fittingly under the third class of considerations relative to the "Canal problem."

3. With the physical elements of the problem removed, and the practicability of the undertaking determined, there still remain problems of utmost importance to be solved before connecting the oceans. These considerations are of a *political* nature. What shall be the legal status of the canal when constructed? Shall it be open, like the high seas, to the world's commerce? Shall it be neutralized by common pledge of all nations, or shall it be regarded as a private waterway belonging to the United States?

Whenever the work is actually begun, this question will necessarily become vital; indeed, it has already become so. It cannot be evaded. The commercial powers of the world are too alert to permit their trade interests to be jeopardized, and these interests must be reckoned with. To avoid all future complications in this respect, the political status of the canal should be determined in advance.

One of the following plans must be adopted:—

1. Exclusive American political control.
2. An "understanding" with Great Britain to divide the responsibility of maintaining the canal and securing its neutrality.
3. A treaty or arrangement with the great commercial nations of the world whereby the absolute neutrality of the canal shall be guaranteed to all ships of trade or war.

The second of these schemes may be eliminated from the list, for the advantages and disadvantages growing out of dual control in such a waterway are practically identical with those of the first scheme—sole American control. This narrows the problem of the political character of the canal to the alternatives of exclusive American control or complete neutralization.

There is some confusion as to the true meaning of the word "neutralization." Statements are frequently met in the press, in party platforms, and in the declarations of Congress that the Nicaragua Canal should be a "neutral" waterway, and open to all vessels of any flag, but that the United States should at the same time reserve to herself the right of closing the canal in times of war against the vessels of an enemy. Again, it has been frequently asserted in Washington that the United States is willing to "guarantee the neutrality" of the canal, but for reasons involving her own safety, she cannot consent to the participation of other nations in such guarantee. This position was taken by Mr. Blaine in his correspondence with Lord Salisbury in 1881, when he seriously maintained that there was no need of international coöperation to this end because the United States was herself willing and competent "positively and efficaciously to guar-

antee" such neutrality. In a vague sort of way this has ever since been the canal doctrine in the United States.

The reservation of any special privileges for American ships in time of war is considerably at variance with the idea of a neutral canal; and the belief in the sufficiency of American guarantee indicates a decided misconception of the meaning of "neutralization." United States guarantee of neutrality really means nothing more than her promise to defend the open waterway against attack. No nation can give a guarantee against the attack of another; it can only pledge its resistance against such attack. No nation can "positively and efficaciously guarantee" neutrality, unless, indeed, it be sufficiently strong and powerful to enforce the guarantee,—even then it could not really give more than a promise to defend the canal route in case another sought to hold or destroy it.

Neutralization means an exemption from all warlike operations, and this condition can only be effected by an agreement of all parties to abstain from such warlike operations. It consists of that immunity from attack that can only be secured by general consent. "Neutralization is the assignment to a particular territory or territorial water of such a quality of permanent neutrality in respect to all future wars as will protect it from foreign belligerent disturbance. This quality can only be impressed by the action of the great powers by whom civilized wars are waged, and by whose joint interposition such wars could be averted" (Wharton Digest, § 145).

It thus becomes evident that if the United States is really sincere in its determination to accomplish the neutrality of the Central American Canal, it defeats its own object by declining to accept international coöperation to that end—for by that means only can neutralization be secured.

The "American Canal doctrine" of to-day, generally advocated, does not in reality contemplate neutralization. It promises merely to keep the canal open in times of peace; to defend it in times of war; and to close it against enemies of the country.

With this understanding of the word "neutralization," (and it admits of no other interpretation) the issue is sharp and clear between an American-owned canal, controlled by the United States, and a neutralized canal as desired by the commercial nations of the world and called for by the Clayton-Bulwer treaty.

The question resolves itself into this, — should the Nicaragua or Panama Canal be neutralized?

Arguments for or against this proposition may spring from three sources, viz. : —

- (a) International Law. Are there any legal duties imposed upon the United States as owner of a ship canal passing through the territory of another state, and connecting two high seas, — in other words, is the United States under any legal obligation to accept the neutralization of such a canal?
- (b) Precedents. Is the United States obliged by any precedents relating to ship canals in general, or to the Central American Canal in particular, to unite with other nations in a joint guarantee of canal equalization?

"Precedents" as here used would naturally include all the treaties, agreements, or official declarations of the United States which can be taken to indicate not only its international obligations but also national sentiments upon the subject.

- (c) Self Interests. Do the best interests of the United States require her monopoly of the Central American Canal, or are they better subserved by a neutralized Central American canal?

International law does not throw direct light upon this question, and there is in consequence much confusion among the various authorities as to the status of a ship canal in the domain of public law. It is only in comparatively recent years that the advances of science have made possible the construction of great artificial channels connecting oceans, and the very few such waterways already in existence have not had sufficient time to establish for themselves a legal code.

The application to them of legal principles is indirect; they can only be made through the more or less doubtful analogies of natural straits, arms of the sea, territorial waters, and the high seas. The value of such comparison is not always to be relied upon; but the general advance of liberal sentiments relative to the freedom of the seas, as developed in the progressive evolution of international ethics, is far more significant. This would indicate a decided tendency toward impressing an international character upon ship canals connecting open seas.

The protracted controversy concerning *mare clausum* and *mare liberum*, which lasted for more than a hundred years, long since resulted in complete victory for the adherents of the latter doctrine. The high seas are free to all vessels, but natural straits connecting the high seas, when narrow, and lying within the territory of a single power, may or may not be entirely free, according to circumstances. Their exact position in law has not yet been satisfactorily determined, though it may be confidently asserted that the trend of modern usage is to withhold from nations, through whose territory such waterways pass, exclusive control over their navigation.

It is to-day generally agreed that bodies of water answering to the description of a strait ought to be free because they are in a greater or less degree necessary to navigation; and only such limitations upon their full freedom of navigation are allowable as the security of the state through which the strait passes seems to demand. When the interior waters of a state terminate at either end in the open sea, the resulting freedom of navigation in them, in times of war, might operate as a serious menace to the welfare of such state; hence it is that certain modifications of the free rights of navigation in such waters may be made by special compact. Yet the fact is not altered that they do in a measure belong to the world's commerce. A sovereign may not debar alien vessels from innocently using such courses, and his own sovereignty over them has been practically limited to the extent of collecting only such dues from passing vessels as

may reimburse him for the expense of keeping the way lighted, buoyed, and properly charted. Denmark no longer can collect revenue from the sound dues she formerly exacted. Such is the case in regard to the Gut of Canso, the Straits of Magellan, and, theoretically at least, to those at Gibraltar. The Dardanelles and the Bosphorus are anomalous, in that their navigation continues to be regulated entirely by treaty. These straits do not, however, connect two open seas—the Black Sea being a body of water “neutralized” by international agreement, and its free navigation being in some respects restricted; hence the Bosphorus and the Dardanelles do not, strictly speaking, fall within the class of natural channels connecting the high seas. In regard to artificial waterways connecting two open seas, a number of elements enter which would seem to remove them at once from the operation of international law, and to exclude them from the class of natural waterways.

It has been asserted by high authorities that an artificial canal, linking two open seas, and being also a navigable waterway, should therefore be open to the world; that it should be regarded as a part of the high seas, and that its freedom of use is a corollary to the rule governing the open oceans it connects, it being a necessity to navigation. A canal, therefore, becomes a public way, like the arms of the sea, and should be regulated by the same laws that direct the world's shipping. On the other hand, it has been as freely asserted by equally good authority, that the fact of an artificial channel not having been granted by nature to the use of man, but being wholly the work of man himself, invests it with the character of private or national ownership. One cannot well avoid this conclusion. To assert that a nation may not construct a waterway through its own territory without conceding its free navigation, is to assert that a nation is not sovereign within its own limits. There is no public law that permits a nation to send its armies across the territory of a neutral power, or in any manner to assume a right of transit over its domains. Convenient routes of overland transit, such as railways, are obviously

under the protection and control of the sovereign power whose territory they traverse. A great transcontinental railroad might be considered necessary to the world's commerce, yet no one would seek to invest such a route with an international character. Should the nations of Europe claim a voice in the management of our transcontinental railroads, we should at once resent the suggestion as an assumption wholly without reason or law. If railroads are subject only to the municipal law, why should canals when substituted for roads become international in character? The approaches to a canal are a part of the territorial waters of a state, and the waters of the canal must necessarily be under the jurisdiction of the territory within which they lie.

Again, no ship canal necessarily involving great labor and cost of construction will ever likely be built by any one nation for philanthropic reasons, and the builders must of necessity have the right to levy tolls. If it were a natural waterway, no nation could derive profit in such a manner; nor could a company of stockholders frame a constitution for its government. There can be no rules or regulations conflicting with the freedom of vessels upon the high seas; therefore, if the waters of a canal are a part of the high seas there would naturally be no need of treaty regulations governing them.

Again, no nation or even combination of nations has the right to construct a ship canal through the territory of another without the latter's consent. This fact necessarily implies the right of a sovereign to construct a canal of his own, for he could not well transfer to another a right he himself does not possess. If he constructs a canal through his own territory, it would seemingly then belong to him, and not to the world at large; and if he transfers such a privilege to another, the latter should stand in the place of the seller.

In the municipal law, the government is authorized, under certain restrictions, to condemn private property for the use of the state. International law has not reached in its development so advanced a state; yet it may reasonably be supposed that at some future time there will be an understanding

between the great nations of the world, allowing them, under proper conditions, to condemn territory for the use and interests of the world in general. Such a canal could offer no question as to its position in public law, for the element of private ownership would be entirely eliminated.

Reasoning on this subject is much confused, because a ship canal, partaking of the nature of an arm of the sea and also of any artificial transit route through the territory of a state, admits of the conflicting arguments which a double analogy must always furnish. One is, however, enabled to maintain with fewer violations of recognized legal principles that a canal built by a nation through its own territory and connecting two open seas is not a public highway, unconditionally open to the world's use. It would be going too far to assert that when a nation at great expense connects two oceans by a channel within its own domain, it possesses no more right over its transit regulations than does the world in general.

Considering, then, the various attributes of ship canals, as compared with those of natural waterways, one is led to assume that if the Nicaragua Canal shall be constructed by the United States, it will not become "an arm of the sea"; and that the United States will not necessarily be deprived by international law of the superior rights of the builder and private owner.

If international law has not yet fully extended its system over artificial channels connecting open seas, commercial powers have already felt the need of such an advance. Experience has partially, if not fully, demonstrated the advisability of such control over ship canals, and the tendency therefore is to invest them with international character. This seems to call for some definite understanding on the subject among the various nations interested.

Although the qualities belonging to an artificial waterway do not entitle the nations of the world, as a right, to a voice in its control, yet for the sake of harmony, for the best interests of the builder, and in order better to serve those whose patronage is desired in the use of the channel, it has been

found desirable to guarantee the safety and neutrality of the passage by treaty stipulations. The importance of a canal which will shorten by many hundreds of miles the usual commercial routes, is coming to be considered too great to be left to the control of any one nation. In the struggling competition of trade, nations are indisposed to tolerate any handicap which tends to interfere with its equality. In time of war, it would become necessary for a belligerent to blockade or to hold against the enemy a point so important as a ship canal. Commerce would be interrupted, and the very object for which the canal was constructed would be defeated. It is natural, therefore, that nations have come to look upon ship canals as subjects of international regulation. Indeed, from the moment the construction of the Suez Canal was contemplated, this idea of international concert for its guarantee of neutrality was considered a *sine qua non* of its financial success. Prince Metternich had declared that its success must depend upon confidence in its neutrality, and De Lesseps himself fully appreciated, as he acknowledged, the truth of his statement. In the Act of Concession given by the Viceroy of Egypt, and endorsed by the Sultan in 1856, a promise was solemnly made that "the Grand Maritime Canal from Suez to Pelusium and its dependent ports would be open forever, as neutral passages to all ships of commerce passing from one sea to the other, without any distinction, exclusion, or preference of persons or nationalities. . . ." The mere promise of Egypt in 1856 (then, as now, under the suzerainty of the Sultan of Turkey) to maintain this status was regarded as inadequate, and the principal nations of Europe, except Russia, signed a treaty in 1873, agreeing that the Suez Canal should be open to the warships of all parties to the agreement. Even this treaty was deemed insufficient to determine clearly and positively the international character of the canal; and in 1887 the Convention of Constantinople was signed by all the great European powers, again excepting Russia. This convention declared that the canal shall forever be open and free, in time of war as well as in time of peace, to the ships of all nations. Its approaches shall never be block-

aded; no act of war shall take place upon it; and hostile ships leaving from either terminus must allow a period of twenty-four hours to elapse between departures. No permanent fortifications are permitted; no nation may mass its naval strength within the waters of the canal nor land troops or material of war along its shores. When the neutrality of the canal is threatened, the Khedive or Sultan may call upon the signatory powers for assistance. Turkey, in whose territory the canal lies, is entitled to exercise sovereignty over it, but no contracting power may enjoy any special advantages or privileges in it. All powers are invited to join in this comprehensive guaranty.

Although Russia has never been willing to join in the general European guaranty, her attitude was made clear when, in the Turko-Russian War she assured the powers that she had no intention of threatening the neutrality of the canal, as she regarded that route as belonging to the world and sacred to its commerce.

It is safe therefore to conclude that international law of itself places no restrictions upon American control of a Central American Canal; further inquiry, however, develops the fact that nations have come to look upon interoceanic ship canals as a proper subject for treaty stipulations. The powers could not as of right demand the neutralization of the Central American Canal; but they will surely expect the United States to admit it for the common interest of all.

This expectation is in accord with the general theories accepted by the United States until recently. This is fully demonstrated by a long line of precedents. Indeed, the neutralization of the canal is the traditional policy of the United States. From 1825, when Mr. Clay declared that the benefits of a trans-isthmian canal "ought not to be exclusively appropriated to any one nation," until 1881, when Mr. Blaine advanced the opposite theory, American statesmen of all parties were intent on securing a passageway for ships across the isthmus, whose absolute freedom of transit should be secured by international guarantee. Every administration from that of President John Quincy Adams, to that of Presi-

dent Grant, who first favored exclusiveness on the isthmus, has indorsed these broad theories favoring the international character of ship canals. Since the Grant administration, President Cleveland and President McKinley have also supported this traditional American policy. During that period of heated controversy over the Clayton-Bulwer treaty from 1850 to 1860, it was not the object of the United States to obtain exclusive proprietary rights in the canal. On the contrary, it was to the maintenance of the neutrality of the proposed route that American argument was wholly directed. From 1860 to 1880 the only concern manifested in respect to isthmian matters was lest Great Britain should violate her agreements by acquiring Central American territory, thereby threatening the neutrality of the route, and lest France might insist upon monopoly of control at Panama.

A glance at the history of the interoceanic transit problem in Central America reveals the fact that all nations interested in its solution, including the United States and the Central American states themselves, have invariably insisted upon the strict neutrality of any Central American canal. This condition has at all times been demanded. In its treaties bearing upon this subject the United States has fully recognized this principle; and in its diplomatic correspondence relating thereto, it has so frequently reaffirmed these views that no confusion or doubt can exist as to its position. This is finally set forth in three canal treaties now in force; the Clayton-Bulwer treaty with England, the Dickinson-Ayers treaty with Nicaragua, and the treaty with Colombia of 1846. All previous United States treaties and all preliminary drafts of treaties with Central American states concerning a canal, kept in view this principle of neutrality. In the Colombia treaty the United States, by its ³25th article, "guarantees positively and efficaciously to New Granada, by the present stipulation, the perfect neutrality of the before-mentioned isthmus, with the view that the free transit from one to the other sea may not be interrupted or embarrassed in any future time while this treaty exists."

The Dickinson-Ayers treaty with Nicaragua (1867) in its

fifteenth article declares that "The United States hereby agree to extend their protection to all such routes of communication as aforesaid, and to guarantee the neutrality and innocent use of same. They also agree to employ their influence with other nations to induce them to guarantee such neutrality and protection."

The Clayton-Bulwer treaty of 1850 recites that neither government will ever "obtain or maintain for itself any exclusive control over the said ship canal." The purport and aim of this instrument is to place a safeguard of guaranteed neutrality over any isthmic canal. After going to the length of asserting that neither power shall annex Central American territory, the two parties agree to ask all other nations to unite in similar engagements.

The change of sentiment in regard to neutralization, first officially championed by Messrs. Blaine and Frelinghuysen, was not intended as a complete reversal of the former doctrine on the subject. This new American policy contemplated a guarantee of neutrality to be given by the United States alone. As both these statesmen believed that an American guarantee was sufficient to that end, their views become rather a modification of the generally accepted theories of neutralization, as secured by concerted action of the powers. Both were entirely willing to pledge the United States "positively and efficaciously to guarantee," etc. They cannot therefore be said to have fully repudiated the ideals of a neutral passageway through the isthmus, although the method they advocated to effect that end would have been inadequate.

It is only within the past few years that advocates of an unqualifiedly American canal have come forward. This ultra-American theory is exemplified by a House document presented in March 1900, by Mr. Hepburn of Iowa, who argues in favor of a Nicaraguan canal so controlled by the United States that discriminations against foreign vessels may be made even in times of peace.

An adherence to the principles of neutralization is also evidenced in the numerous charters and concessions which have been granted during the past twenty years to various

American canal companies. In most of these instruments a neutral waterway is called for. Indeed, neither Nicaragua nor Colombia could grant the exclusive right to control a canal through her territory without violating treaty stipulations with European powers.

Thus it appears that the doctrine of canal neutralization is the traditional policy of the United States, as well as of Great Britain, the European nations, and the Central American states; that the doctrine changed in American diplomacy to neutralization as secured by American guarantee alone; and it further appears that the theory of sole control as opposed to neutralization is of comparatively recent origin.

To-day the idea seems to prevail that the geographical position of the United States in connection with its commercial interests, its safety in time of war, its political relations with its neighbors, and lastly, its obligations to its commercial marine, all combine to warrant a disregard of precedent and to justify the demand for complete political control of the Central American canal. In other words, American interests in the isthmian canal are so great that the United States cannot afford to be governed simply by precedent. In determining, therefore, the political attitude toward the projected canal, the elements of self-interest will no doubt figure far more prominently than considerations of precedent.

It is not unreasonable to assume that in the development of national needs and conditions, cases may arise where it would be unwise to adhere to ancient customs merely for the sake of consistency. The mind is apt to cling, as by instinct, to the traditions of the past. Well-grounded precedents in law have often so effectually blinded the eyes to reason that a century of progress has scarcely been sufficient to efface them from the statute books. Hoary abuses, when dignified by age, have defied correction for centuries.

Precedents cease to have validity when the circumstances on which they are based cease to exist. The obligations to follow them are purely theoretical. In this particular case there may be special reasons why the past should be disregarded. As observed, the subject of ship canals connecting

high seas, being comparatively modern, has not yet found a definite place in public law, though evidence tends to prove that ship canals do possess a quasi-international character, and that their owners are under some manner of obligation to the world to keep them inviolable from hostile attack. At best, the precedent is but doubtfully fixed in law, and might be fittingly ignored should self-interest so demand. Indeed, an exclusive American control of the Nicaragua Canal might in itself establish a new precedent more valuable than the old.

Abandoning, therefore, all thought of the past, the subject may be considered solely from the standpoint of the future, — Is it to the best interests of the United States to construct the canal as a national undertaking and to maintain over it sole financial and political control? Do those interests favor the repudiation of all existing treaties bearing upon the subject? Do they call for a denial of the spirit of public law? The preponderance of public sentiment in the United States is in the affirmative.

The advocates of American monopoly of the canal route contend that the safety of the United States demands this course; that the protection of the country being of the first importance, all other considerations should be regarded as secondary. They maintain that a neutralized canal would expose both of the American coasts to hostile attack. In case of war, the United States would be compelled to permit an enemy's fleet, while bent upon an errand of destruction, to pass unchallenged through a neutral canal. In time of peace, it would be obliged to maintain a largely augmented fleet in both Pacific and Atlantic waters; in short, to double its navy. Now, on the other hand, were the United States to fortify the banks or the entrances of the route, a hostile fleet could be debarred from its use; at the same time the American navy would be vastly increased in effectiveness by exclusive freedom of passage. In this manner a squadron could be quickly transferred from the Atlantic to the Pacific, while the enemy would be relegated to the long voyage by way of Magellan.

Furthermore, a neutralization of the canal by general compact would likely prove, when the test came, to be nothing more than a paper agreement. The route not being fortified, an enemy might seize the canal and hold it as a base, greatly to the prejudice of the United States.

They further maintain that there are circumstances connected with the neutralization of the Suez Canal which should serve as a warning to those who advocate an equality of interests in the isthmian canal. Great Britain holds the control of that route. Her occupation of the territory through which the passage has been cut furnishes all the proof necessary that England would not hesitate to seize the canal, if the defence of her Indian possessions seemed to call for such action. The same conditions and necessities would drive the United States to a similar course in Nicaragua. How much better it is, they say, to avoid all cause of future misunderstanding, by promptly asserting the right to fortify and hold the canal.

They also maintain that commercial interests demand an American monopoly of the route. Efforts are being made, through subsidy and various other measures, to restore the prestige of the American merchant marine. To-day the sea-carrying trade of the world is almost wholly commanded by Englishmen. The discrimination in tolls that could be made in favor of American shipping through the isthmian canal would no doubt furnish a decided stimulus to this growing American industry.

Possibly the strongest arguments for an "American Canal" are found in the application of the Monroe Doctrine to the subject of canal equalization. While those principles, as enunciated by President Monroe in 1823, only denounced foreign interference in the domestic affairs of the American states, they have since been extended into a broader doctrine which gives to the United States this very right of interference. The result of nearly seventy years of varying interpretations of this political creed has tended to remove the Western continents from the sphere of European influence, and to spread the mantle of a United States protectorate over their whole

extent. The Nicaragua Canal, by virtue of its geographical position, and also because of the American interests, which it is particularly designed to serve, seems to fall appropriately under the operations of this doctrine.

The nations of the Old World have already completed their short cut to the Orient, and opened the way to their colonies. They are entirely free to make any disposition of their own route. The United States claims no right to interfere, and asks no voice in its management. Therefore, when the United States shall construct her short route from the Atlantic seaboard to California, Alaska, and Pacific islands, she has a right to insist upon its exclusive control. A joint guarantee of the Nicaragua Canal would reduce the United States to the lower plane of importance and influence in Central America occupied by the nations of the Old World. This should never be permitted; by her position in the Western Hemisphere, the United States should enforce the claim to those privileges which her paramount interests there clearly entitle her to enjoy. The United States is heir to the Western Hemisphere. The same "manifest destiny" which impelled the fathers to reach forth to the Pacific Ocean will likewise urge their sons to follow a scheme of rational expansion which will extend the shore line of the United States to the Nicaragua Canal. This course, they say, is inevitable. The first step in this direction has been taken in Cuba and the West Indies. The unlooked for acquisitions in the Pacific will make the second step more than ever necessary. The territory intervening between the Rio Grande and the San Juan rivers, they insist, must eventually come under the control of the great northern state. This fair land is misruled by a number of irresponsible governments, the merest travesties upon republican institutions. They are unable to maintain order, or to protect United States capital seeking investment there. Peaceful conditions in Mexico will probably end with the resignation or death of President Diaz, and a return to tumultuous politics may be confidently expected. American interest will sooner or later demand the acquisition of these states, when the canal will be actually upon American soil.

With such a future of expansion in mind, it would be unwise, they believe, to hamper the government by pledges of neutrality or promises against fortifying the canal. Suppose, for instance, that Jefferson had been confronted by a previous agreement never to acquire territory west of the Mississippi River, or that Polk had been prevented by some former treaty stipulations from establishing full American sovereignty over the narrow entrance to San Francisco Bay.

Let there be no future mistakes such as the Clayton-Bulwer treaty. The parting of the ways is at hand; there can be reconciliation between the doctrine of American control of the canal as dictated by self-interest, and enjoined upon us by the Monroe Doctrine, on the one hand, and the doctrine of canal equalization as demanded by European interests on the other. The United States, therefore, must abandon all its treaties which call for international control of the channel. It should acknowledge its breach of faith, and take the consequences, whatever they may be. This action would prove less serious than to abandon the Monroe Doctrine, and accept European dictation in any part of the Western Hemisphere, and open a convenient passageway to the fleets of Europe.

teen The advocates of a policy of neutralization hold, on the contrary, that the greatest good demands the entire freedom of commercial transit. They found their theory upon the broad principles of *mare liberum*, and in accordance with the development of international law. The inviolability of the canal is a condition contemplated in all fairness by the world at large, and it is also a condition wholly consistent with the best interests of the United States. It is a policy dictated by practical wisdom.

Wars are not the outgrowth of open and free competition, but too often result from trade restrictions of one kind or another. The tendency of modern times is to remove as far as possible, all barriers to free and untrammelled commerce. The progress of international law has been in the direction of securing and safeguarding the common interest of the whole family of nations in opposition to the tendencies of local greed and aggression. The same policy that calls for an

“open door” in China, for universal freedom of trade competition, for the removal of protective tariffs, also calls for the unrestricted use of all commercial highways. The commercial isolation of the United States should not be maintained. The great extension of her commerce has already brought her so intimately in connection with other powers, that her own commercial interests have in a great measure become indetical with theirs. To close so important a highway as the Nicaragua Canal involves the adoption of a policy opposed to progress and civilization; it would remove the United States from the commercial fellowship of nations, and bring upon her every form of retaliatory legislation. With the enmity and jealousies engendered by so narrow and selfish a policy, the way would be constantly open to disagreement and war upon slight provocation. The sympathies of the world would be against the United States, and other nations would find common cause against her.

The neutralization of the canal is an inevitable result, and it does not comport with the progressive character of Western ideas to delay or seek to avoid it.

The principles of the Monroe Doctrine are in no manner violated by equalization of the route. It would not introduce the political system of the Old World into the New, nor give to Europe a right of interference in the affairs of the American continent. On the contrary, a guarantee of neutrality is the very opposite of interference. It is a pledge of non-interference. It places a lasting check upon the advance of foreign influence at a particularly vital spot in the Western continent.

Such an agreement does not contemplate the yielding of the United States to any foreign influence or control of the canal, but expressly removes all possibility of such interference or control by any one or more nations. It does not, then, even violate the spirit of the Monroe Doctrine; it is rather directly in line with it. It exacts a promise from the most powerful and most rapacious nations of the world, made firm and binding by treaty regulations, to abstain from any kind of interference in the affairs of the isthmian canal.

But even should the dogma of Monroeism be infringed upon by the proposition of a neutral Central American waterway, there is no reason why that doctrine should not be disregarded in the furtherance of a better cause. It would be folly to cling to a doctrine simply for the sake of the doctrine itself, or for any other sentimental reason. The object of every general policy is for the general good. If, in any particular case, the application of a theory, however sound in a broader sense, is found to be unwise, it should be cast aside. If logic and reason show that the best interests of the United States are subserved in assuming the entire responsibility of managing the political affairs of the canal, and a consistent observance of the Monroe Doctrine equally demands it, then it is proper to follow the Monroe Doctrine, — otherwise, as in this case, by all means abandon it.

Assuming further that the Monroe Doctrine would be encroached upon by conceding a joint guarantee of neutrality, it may be asked: By what right does the United States deny the privilege European nations claim to look after the welfare of their commercial interests in the Western Hemisphere? There can be no reasonable doubt that foreign nations will be solicitous about the advantages to accrue to their commerce by maintenance of the freedom of transit through the Nicaragua Canal. The United States has not only commercial but territorial interests in the Eastern Hemisphere, and is also demanding an open door in Asiatic ports. How may she be justified, then, in denying to foreign nations in America what she herself claims elsewhere?

The neutralization of the canal would moreover avoid those dangerous aggressive tendencies which must surely be engendered by commercial advantages retained only through force of arms, both in defiance of the rights of others, and contrary to the better instincts of justice prevailing at home.

The imposition of differential tolls would excite universal disapproval, and would call upon the United States the denunciation of all commercial nations. The commercial and political interests of several European nations in the Far East, aside from the desire to defend a vital principle of justice, would

force them to combine against the United States, should the latter persist in claiming the privilege to close the canal against their ships. Each maritime power would immediately call upon Nicaragua or Colombia, as the case might be, for the observance of those treaty rights secured to them by "most favored nation" clauses. There need be no occasion for self-deception in this matter. England's determined resistance to American attempts to avoid the obligations of the Clayton-Bulwer treaty demonstrates her probable attitude toward the freedom of transit through the Nicaragua Canal.

France is solicitous concerning the maintenance of this principle, as plainly shown by her Central American treaties; and one cannot well suppose that Germany or Russia would permit itself to be handicapped by any navigation disabilities that other nations escape. The United States might, indeed, defy the nations of the world, were the cause a just one. In this case she would be defending, against overwhelming odds, a principle which has been condemned by the civilized world, including herself. Nations, like individuals, cannot afford to ignore the good-will of their fellows. To persist in this policy is simply to invite troubles which would far outbalance any temporary trade benefits which might at first accrue through a monopoly of the waterway.

At all events, the policy would have to be abandoned sooner or later; but while upholding this position of supposed vantage in Central America, the United States would be subjected to the greatest amount of needless expense, annoyance and risk. Upon the United States alone would devolve the duty of preserving order and protecting the canal. In times of the profoundest peace the United States would be obliged to police the route in a thoroughly effective manner; in time of threatened disturbance a large military force would be required upon the scene. The United States would have to be prepared always to despatch troops to the line of the canal. Foreign vessels departing upon long journeys *via* Nicaragua or Panama must be assured of finding the way clear. No Central American revolution must be permitted to interfere, no political disturbances, riots, or threats of lawlessness in

the neighborhood of the channel could be tolerated, which would in any way render hazardous peaceful passage through the canal. The danger of hostile acts committed when unfriendly relations exist between two nations would have to be provided against. For all "accidents" the United States would alone be responsible under her sole guarantee. Thus the United States would undoubtedly be forced to assume a more or less active, though unwelcome, interest in the never ceasing revolutions of those turbulent Central American states.

The liabilities of the United States would only begin here. To fulfil her promise alone and unaided to maintain the "strict neutrality" of the canal, she would needlessly burden herself with a task which under the most favorable conditions of universal peace would prove irksome and expensive, and which, upon the outbreak of hostilities at home or abroad, might become onerous in a high degree. But granting immunity from foreign intervention, in times of peace, what would be the extent and character of her obligations toward nations in time of war? The political complications in Eastern Asia, consequent upon territorial changes, have already sown the seeds of jealousy and bitter feeling in Europe. It is not unlikely that conflicts of European powers will result. In case of any war between two or three great maritime powers, and particularly in the event of one growing out of interests in Eastern Asia, the isthmian canal would, beyond question, become involved. This would naturally lead to a naval demonstration at one or the other entrance to the canal. Suppose, for instance, that England, free from treaty obligations to observe the neutrality of the canal, should attempt to blockade the Atlantic entrance, to prevent the entrance or exit of French, German, or Russian vessels. Would it not become the duty of the United States at once to raise the blockade? The injured party might come to her assistance, but would that not inevitably draw her into a foreign war? — a war in which, in all probability, the United States would not have the slightest material interest. Then, it may safely be assumed that from the moment the United States consti-

tutes herself the sole guardian of the open route from the Atlantic to the Pacific, she takes upon herself a grave responsibility, — a responsibility which may prove exceedingly burdensome. The almost inevitable conclusion presents itself that the first European war would thus convert the United States from a neutral power into an unwilling participant. This should be reckoned a large price to pay for the advantages to be gained from an "American Canal."

The return for so great a price — a price that means no less than a departure from a cherished and time-honored policy — should indeed be great. It should be a national advantage, so great and valuable that it is absolutely indispensable to her safety and welfare.

Is the advantage, then, of fortifying the canal and closing it against foreign measures of aggression worth so great a sacrifice? — for only in time of war against the United States would she desire to bar the route against naval vessels, and then only against the ships of an enemy. Under present conditions this might indeed be considered a doubtful advantage. The value to the United States of exclusive control of this route in periods of hostility will depend very largely upon the relative size of her own and her adversary's navy. The peculiar nature of a long narrow channel through a region of tropical jungle is such as to render it extremely doubtful whether a large protective force could secure its use, — even against an inferior foe.

A canal with its series of locks, dams, and artificial embankments, presents many vulnerable points to methods of modern attack. A resolute enemy equipped with efficient appliances might easily destroy the use of the passage for months, an act which the most extraordinary vigilance could not prevent. In case of war, when a superior navy might invest the place, the advantages to the United States of the possession of the passage might be turned into an actual disadvantage. A blockade might then be effected at either terminus of the route, and maintained to the great injury of the United States. The imprisonment of American war vessels in the canal, either by blockade or by the destruction of a dam or

lock, might easily result in the most serious calamities. In fact, the fear of this very contingency, and of the loss of vessels by explosion of mines placed in the channel, would likely render its use impracticable in times of war.

Assuming that it were possible so effectively to guard the channel that its use could be preserved to the United States in times of conflict, and closed against the enemy, the fact yet remains that the United States is wholly unprepared to maintain with safety the exclusive control over the route. The protection of the American coasts depends, after all, upon the strength of the navy, and all outlying posts which must be guarded are of value only as they may be defended without too great a division of strength.

While the policy of the United States calls for an annual increase in the navy, there are other powers whose needs will require them, not only to keep pace with the general advance in armament, but to maintain for many years to come larger naval fleets than that of the United States. Such being the case, American efforts to retain a position of exclusiveness on the isthmus may prove, after all, to be of doubtful expediency.

It may often be asserted that England's military occupation of Egypt and her fortifications along the route to India, together with her ownership of a controlling interest in the Suez Canal itself, virtually invest her with political proprietorship of that channel. But while it is true that the freedom of transit into the Red Sea has not been subjected to the test of a general European war yet, there has been no act of England so far that violates the terms of the Constantinople agreement. She claims no extraordinary political rights over the canal itself, and makes no attempt to fortify the route. Her line of possessions and naval stations from Gibraltar to Hong Kong, are permitted in no way to threaten the neutrality of the canal. On the contrary, England has always taken the initiative steps in bringing about international agreements to secure its neutral character. Her superior naval strength undoubtedly would give her the power, in case of war, to effect a blockade of the Suez Canal without entering

within the zone of neutrality. This fact, however, cannot be regarded as an evidence of England's bad faith, or cited to disprove her belief in the neutrality of interoceanic highways. The position of the United States, with islands and coaling stations on either side of Central America, would place her in somewhat the same attitude toward the Nicaragua Canal.

By following, therefore, the spirit of international law, by observing her treaties, and by inviting the nations of the world to join in keeping open the canal, the United States deprives herself of one doubtful advantage, and at once relieves herself from a host of perplexities.

With the neutrality of the canal guaranteed by international agreement between the great maritime powers, there would be no need of fortifications; because in the face of so powerful a combination none would dare to violate the freedom of the route. American armies would not be needed to defend its banks; American ships would not be called upon to raise a blockade or disperse a threatening squadron. The United States would escape the many pitfalls of foreign entanglements which the selfish policy of sole political control must inevitably place in her path; and thus, — the advocates of neutralization maintain, — by the adoption of a more liberal policy in Central America, “an inexhaustible source of international conflict” would be avoided.

III

THE UNITED STATES AND SAMOA



III

THE UNITED STATES AND SAMOA

DIFFERENCES between nations are necessarily of a serious character, because the settlement of such disputes affects directly or indirectly the fortunes of many individuals. They are also attended with danger, because close behind international misunderstandings lurks the spectre of war. In every heart exists a belligerent chord, and the most impartial of men will magnify the shortcomings of other nations while they laud the virtues of their own. Race prejudices are always more or less acute. War quickly appeals to popular favor when quarrels over personal rights or privileges expand into national issues, and then patriotism is likely to assume the form of blind passion without reason or forbearance.

However trifling, then, an international dispute may appear, it possesses, nevertheless, a hidden element of danger. It is partly on this account that the Samoan imbroglio, though now happily relieved, is worthy of attention. In the world's history the story of Samoa can never expect to find a more prominent place than a footnote. In the annals of diplomacy it must figure as a farce. Robert Louis Stevenson aptly characterized the Samoan wars as an "infinitesimal affray"; Samoa was like a tea-pot in which a tempest raged while three great nations jostled each other in fussy endeavors to keep the little pot from boiling over.

If the Samoan episode appears trivial to the general observer, it possessed nevertheless a pathetic side to the philanthropist, who could not fail to see in this South Sea enterprise of England, Germany, and the United States, another demonstration of the withering influence of civilization upon semi-barbarous peoples. The assumed burden of the white man to protect and educate the black one often results in the undoing of the latter. The result comes naturally,

for, in the long run, the law which proclaims the survival of the fittest regulates human affairs as it controls all organic life. When the lion is hungry the lamb dies; when the man with a rifle takes to expansion, the man with the spear yields his estate. In Samoa the operation of this law was unique. The unfortunate natives were only saved from immediate extermination through the jealous watchfulness of three protectors. The duty in Samoa of each protector was ostensibly to shield the natives from the rapacity of the other two. In the meantime, the Samoans lost all control over their own affairs, and were crushed under the weight of an "autonomous government," created by their kindly disposed friends. The inevitable end — the loss of their territory — has just recently been effected, and their ultimate race extinction is simply deferred.

The history of American political relations with Samoa is primarily of interest because it reveals the first genuine instance of departure from a time-honored policy of non-intervention in the domestic affairs of alien nations. In assuming the responsibilities of fashioning and maintaining a system of government for this little group of islands in the mid-Pacific, the United States entered into treaty relations with two great powers, pledging itself to protect a people it had not accepted into the Union, and in whose interests it had not the least concern.

Since the famous farewell address of President Washington, until quite recently there have been few public officials of the United States who have not expressed belief in a doctrine of non-interference in the political affairs of other nations. This principle, which had become as much a tenet in the American political creed as any enactment of the constitution, was forcibly expressed by Washington, who realized that his country was destined to attain great wealth and influence, could it be spared the exhausting drain of needless wars. He foresaw the great danger of meddling in the chronic quarrels that tormented the nations of Europe. Similar sentiments were expressed in the strongest language by John Adams and Thomas Jefferson. President Fillmore, in

his annual message of 1851, pithily characterized the nation's maxim, "Friendly relations with all, but entangling alliances with none."

Frequent temptations have been held out to the people of the United States to depart from their traditional policy, — and especially when the sympathies of the country were aroused by appeals from weak nations suffering impositions, — or when neighbors of the Western world were struggling to obtain their independence, and asked for aid or moral support. But every appeal to assume an interest or to share a responsibility in the domestic concerns of alien nations has been consistently refused by the government.

Mr. Seward, when Secretary of State, in declining an invitation from France to join in the exercise of a moral influence upon the Emperor of Russia, said: —

Our policy of non-intervention, straight, absolute, and peculiar as it may seem to other nations, has thus become a traditional one which could not be abandoned without the most urgent occasion, amounting to a manifest necessity.

Mr. Frelinghuysen, Secretary of State, instructing a diplomatic representative in Chili (January 9, 1882), said: —

The President wishes in no manner to dictate or make any authoritative utterance to either Peru or Chili as to the merits of the controversy existing between those republics. . . . Were the United States to assume an attitude of dictation towards the South American republics, even for the purpose of preventing war, the greatest of evils, or to preserve the autonomy of nations, it must be prepared by army and navy to enforce its mandate, and to this end tax our people for the exclusive benefit of foreign nations.

This fundamental principle of the American government was observed for nearly a century.

It is true that in its earlier history there are numerous instances when the government sent out military expeditions to attack bands of pirates, or to redress wrongs committed upon the rights of American citizens. Several naval demonstrations were made in the Mediterranean in the first part

of the century, for the purpose of suppressing the buccaneering propensities of the Barbary pirates who flaunted the black flag from various strongholds on the North African coast. A letter from the Dey of Algiers, in 1815, to the "happy, the great, the amiable James Madison, Emperor of America, may His reign be happy and glorious," was answered by a broadside from Admiral Decatur's fleet, for the Dey had been tolerating acts of piracy upon American commerce. But none of these examples of interference could be quoted as exceptions to the rule of non-intervention. On several occasions the operations of the Monroe Doctrine have seemingly led the United States to swerve from this same policy; but in those instances there was the reason of jeopardy to American interests — reasons sufficient to exclude those acts of threatened belligerency from the category of wilful and useless meddling.

The Samoan affair, indeed, marks the beginning of a new epoch in the history of American foreign relations. Commenting thereon, Mr. Gresham, the Secretary of State, in a report to the President, May 9, 1894, said: —

This duty is especially important [of reviewing the facts of the case], since it is in our relations to Samoa that we have made the first departure from our traditional and well-established policy of avoiding entangling alliances with foreign powers in relation to objects remote from this hemisphere. Like all other human transactions, the wisdom of that departure must be tested by its fruits. If the departure was justified, there must be some evidence of detriment suffered before its adoption, or of advantage since gained, to demonstrate the fact. If no such evidence can be found, we are confronted with the serious responsibility of having, without sufficient grounds, imperiled a policy which is not only coeval with our Government, but to which may, in great measure, be ascribed the peace, the prosperity, and the moral influence of the United States. Every nation, and especially every strong nation, must sometimes be conscious of an impulse to rush into difficulties that do not concern it, except in a highly imaginary way. To restrain the indulgence of such a propensity is not only the part of wisdom, but a duty we owe to the world as an example of the strength, the moderation, and the beneficence of popular government.

Whether or not the signing of the treaty of Berlin in relation to the Samoan matter actually planted the seed of a new political religion must be left to individual opinion, yet the fact is certain that since the making of that treaty in 1889, a "new school," advocating a more generous foreign policy, has sprung into existence. Supporters of an aggressive foreign policy argue that conditions have changed, and that the United States, being no longer a fledgling among nations, must assume its proper share of responsibility in furthering the common welfare of mankind.

I

The term "Samoa" is applied to a group of twelve small islands whose combined area scarcely exceeds that of Rhode Island. It is one of the many island systems of Polynesia, which, like constellations upon a map of the heavens, dot the Southern Pacific chart, converting that vast region into a veritable island world. The position of this particular group is approximately between latitudes 13-15 south, and longitudes 168-173 west, and it lies upon the direct route taken by vessels from Western American ports which ply *via* Honolulu to the Australasian colonies. The principal port, in fact the only port worthy the name, is Apia, situated on the island of Upolu. At that point foreign mercantile interests in the archipelago centre, and there for many years the consular representatives of several countries resided.

The islands are of volcanic origin, and rise boldly from the sea, — the isolated mountain-tops of a great submerged range. From summit to coral-fringed base, they are blessed with luxuriant tropical vegetation, and charm the eye with surpassing loveliness.

The central position of the group, with its fine climate and the amiable character of its people, attracted many wanderers to its shores. In the earlier part of the century Samoa was visited by a few roving traders who came to barter their calico prints and cheap baubles for copra and tortoise shell. Numerous adventurers of a recognized South Sea type, mostly escaped convicts from Australia,

deserters from ships, and the nondescript ne'er-do-wells who infested the Pacific islands in the earlier days, drifted in the course of their wanderings to Samoa. They came from time to time, either for gain or adventure, or else to escape the consequences of crimes committed in more civilized parts of the world. At that early day in the far-away haven of the Central Pacific, retribution followed slowly the misdeeds of men. Missionaries came and found in Samoa a congenial field. Whalers from New Bedford and Sydney touched at the islands for fresh supplies, and to enjoy a period of revelry. Those are recorded by South Sea chroniclers as the romantic days of the small trader and the ubiquitous "beach-comber,"—the days of native simplicity and welcome that preceded the modern period of organized commercial enterprise. With German, English, and American trading firms soliciting business upon the islands, Samoa entered upon an era of foreign interference and arrogance,—an era of mischievous political plots and counter-plots, of bitter jealousies and war. The Samoans then discovered that the white men, whom they had revered as superior beings, were morally no better than themselves, if, indeed, they were quite as good. The natives were wholly disenchanted when they found at last that the white man's anxious solicitude for their welfare was a negative charity based on greed. Finally the Samoans realized that they must accept willy-nilly the invincible white strangers who had settled among them, and whom they could never drive away.

As early as 1850, England, Germany, and the United States were represented by commercial agents in Apia; and in 1854 the great South Sea trading firm of Godeffroy and Company, of Hamburg, a chartered monopoly, established itself upon Upolu. For many years thereafter the history of Samoa was the history of this well-organized trading company. Under the able leadership of its first manager, Theodore Weber, who, it appears, was both chief of the firm and German Consul, the company prospered marvellously. By a mortgage system admitting of skilful manipulation of titles, which was quite

beyond the native understanding, large tracts of land fell to the company's portion, and these were industriously converted into plantations of cocoanuts. The methods of Godefroy and Company, from a purely commercial point of view, have been denounced as unscrupulous, but the testimony of rivals should be carefully weighed. One must also bear in mind that the honor line is exceedingly hard to trace in all dealings of civilized with semi-civilized peoples. In course of time rival American and English trading concerns sprang into existence at Apia. Fierce competition between these companies, where the volume of business could scarcely support one, often induced their zealous managers to adopt unfair methods for the purpose of gaining native favor and trade. The efforts of the three consuls, who were usually strongly prepossessed in favor of their kinsmen, to protect the traders of their own nationality, led to many official blunders. Several hundred foreigners—principally German, English, and American—resided at Apia. The jealous competition of the traders reacted upon these, and each partisan faction espoused with intense enthusiasm the cause of its own nationality. Seemingly incapable of regulating their own affairs within the municipality of Apia, the sterner interference of home governments was often invoked, for the purpose of restoring order where chaos reigned. Commercial rivalry ripened into national jealousy, and all within the confines of a mile of ocean beach. When the situation at Apia became hopelessly involved, and wholly beyond the possibility of local adjustment, England, Germany and the United States took the matter in hand. Therein lay the motive of Samoa's woes, and the perplexing problem of her relief. Therein also lay the causes of the United States' abandonment of her time-honored policy of non-interference.

The native Samoans are generous, emotional, amiable in disposition, of pleasing and even courtly manners, and much given to ceremony and merriment. There is much of good and little of evil in them. They are willing to kill white men only because white men kill them. Nature has so fully responded to their simple wants that they are inclined to

indolence and easy enjoyment of nature's bounty. They possessed no real property in fee. A political economy based upon communal ideas weakens the incentive to acquire large private wealth, hence it was difficult for the "government" to tax its subjects. Their own system of government was essentially of the patriarchal type. Every community or clan had a "royal" family, the chieftainship being hereditary as to the family, but elective as to the individual. When a chief was selected by vote of his neighbors, he was usually dignified by honorific titles. The well-known name of "Malietoa," the "Pleasing Hero," is one of these. In a measure the chief was a sacred being, of greater influence — if he proved popular — than of actual power over his people. His son succeeded to his name and position only when elected to do so. A chief having attained very great popularity or military success might have honorific titles bestowed upon him by clans other than his own; and should he receive in this manner the recognition of five different clans, he was considered the Supreme or Highest Chief, and accorded kingly honors. The idea of royalty, as understood in Europe, seems rather to have been a foreign innovation in the islands.

When Samoa became a treaty-making power, the necessity for a stronger central government with a definite and responsible head was felt. The step from a patriarchal form of government was easily taken under the tutelage of the whites, but true conceptions of a king apparently never sank deeply into the Samoan consciousness. To revolt against the *de facto* king because he had enjoyed an inning of several years and should therefore give other worthy men a chance to realize their ambitions, was entirely proper and legitimate according to Samoan custom. The people therefore had little idea of "government," as understood by modern civilized nations, and consequently a strong central power levying taxes and actually enforcing judicial decrees was not properly comprehended. The Samoans were unable to appreciate the utility of contract obligations; they rejoiced in peace, but tribal disturbances were more or less frequent

throughout the islands. The white man was given the heartiest welcome, and has never since found an enemy among the Samoans, except when his own misdeeds have driven the simple natives to desperate retaliation.

II

Previous to the year 1872 no interest whatever in the United States attached to these distant islands. They were of neither political nor commercial importance. In that year, however, Admiral Meade, who was cruising about the Central Pacific in the U. S. S. *Narragansett*, entered into an agreement, quite upon his own authority, with a certain chief on the Samoan island of Tutuila, whereby the local chief granted to the United States the exclusive privilege of establishing a naval and coaling station in the harbor of Pago-Pago. In return for this favor the chief expected the friendship, and if need be the protection, of the United States. The value of a coaling station in that locality was appreciated, especially in the event of the completion of an isthmian canal. When Admiral Meade's agreement with the chief reached Washington, the Senate hesitated to sanction the "friendship and protection" part of the bargain, and no action was taken upon the matter. Soon after this (1873), having been urged by "certain highly respectable persons" who represented to the government the importance of the growing trade between the United States and the South Sea Islands, President Grant sent Col. A. B. Steinberger as United States Commissioner to Samoa, with instructions to make a full report concerning the conditions, commercial possibilities and general importance of the islands.

A report was soon made, and Mr. Steinberger was again invested with authority (1874) to revisit the islands for the purpose of "observing and reporting upon Samoan affairs, and impressing those in authority there with the lively interest which we take in their happiness and welfare." Instead of returning at once to Samoa to carry out the object of his

mission, it is alleged that Mr. Steinberger proceeded directly to Hamburg, and there entered into contract relations with the president of the great trading firm of Godeffroy and Company, pledging himself to their interests. Mr. Steinberger, who seems therefore to have become an adventurer, and unfaithful to his trust, proceeded thence to Samoa under the mask of United States Commissioner, but in reality to carry out the terms of his Godeffroy contract. He arrived in Samoa in the early part of 1875, and devoted his energies to the interests of his new business. He soon became involved in Samoan politics. Internal dissensions convulsed the islands, the primary cause of disturbance being the rivalry of two members of one family, who claimed each the coveted title of "Malietoa." Under a new form of government, but recently adopted, Malietoa Laupepa, the "king" was in retirement, and the country was ruled by Councils of State. Mr. Steinberger gained great favor among the natives; and with the aid of some other white men, who were in sympathy with his projects, he prevailed upon the Samoans so to alter their constitution that Malietoa Laupepa should become, for a limited number of years, the recognized king, and he, Steinberger, should be made Prime Minister. While acting in such a capacity, he represented to the Samoans that their islands were under the protection of the United States.

In course of time rumors of this condition of affairs reached Washington, and Congress speedily called for information in relation to Steinberger, his mission and his powers, which resulted (May, 1876) in the Senate's repudiating any considerations of a United States' protectorate over Samoa, and disavowing all interference in Samoan domestic concerns. In the meantime, however, a British war vessel happened along, and the enemies of Steinberger took the opportunity of having that reputed adventurer seized and deported. By the same movement, Malietoa, the king, was dethroned and held prisoner. Instantly the islands blazed into war, and the vacant throne became a prize for several contending chiefs. The prospect of never ending tumult which followed the downfall of Steinberger (encouraged by the interference of

several rival foreign factions in Apia), finally induced the Samoans to pray for an English protectorate over their distracted country. When the fact became known to the foreigners in Apia, the German and American representatives and residents were greatly alarmed. For once they forgot their commercial rivalries, and acted together, their interests being united in a common cause against English annexation. With the connivance of the German Consul, as is supposed, the American commercial agent at Apia hoisted his flag over the city, and proclaimed a United States protectorate. A similar occurrence took place a year later, when an English commissioner arrived at Apia for the purpose of extorting certain treaty concessions from the king. Upon this occasion English persuasion was rendered the more potent by a squad of marines from a vessel lying in the harbor; and the American flag was again hoisted by the agent over the government building, in order to proclaim to the world, and especially to the British commissioner, that any treaties relative to Samoa should be made in Washington. Both of these somewhat hasty acts were disavowed.

The efforts made by the natives for English annexation proved unsuccessful, and the disappointed chiefs returned from their mission abroad only to find the land still in the throes of civil war. Encouraged by the flag-raising propensities of the American Consul, they turned to the United States, in the hope of finding relief in an American protectorate. Mamea, a high chief, proceeded to Washington (1877), but there he found no disposition on the part of the authorities to depart from a policy that opposed all entangling alliances with foreign nations. The generous offer of his realm was declined by the President, but the object of his mission to the United States was not wholly defeated. He concluded a treaty in Washington, January 16, 1878, whereby the United States was granted "the privilege of entering and using the port of Pago-Pago, and establishing therein and on the shores thereof, a station for coal and other naval supplies"; the treaty further guaranteed, that thereafter Samoa would "neither exercise nor authorize any juris-

diction within said port adverse to such rights of the United States, or restrictive thereof." In return for these concessions it was provided in the treaty, that:—

If, unhappily, any differences should have arisen, or should hereafter arise between the Samoan Government and any other government in amity with the United States, the Government of the latter will employ its good offices for the purpose of adjusting these differences upon a satisfactory and solid foundation.

This treaty was made by the United States more in the desire not to appear wholly indifferent to the friendly advances of the Samoans than for any importance it attached to Samoa, or advantage to be gained by close political or commercial relations with her. It was indeed felt by many that the mere offer to use friendly offices in case of difficulty was a rash promise that might some day call for fulfilment, especially as Germany, with her preponderance of commercial interests in the islands, would probably sooner or later seek forcibly to acquire the group.

The Samoans, however, proceeded to make treaties of similar character the following year with England and Germany, granting to each exclusive rights in certain harbors for naval and coaling stations. In the case of the German treaty the Samoans were far more generous, through coercion it is said, and granted to the energetic German representative certain concessions that appeared to be incompatible with the favored nation clause in the American treaty. This fact excited some feeling of displeasure, which was no doubt more keenly felt in the American consulate at Apia than in the State Department at Washington. To American citizens in Samoa it suggested imposition on the part of Germany, and convinced them of Germany's intention to secure a grasp upon the islands that would lead to ultimate annexation. There can be little doubt had Germany then made a *coup d'état*, and formally seized the islands with a graceful recognition of American and English rights in their respective harbors, the world would not have been profoundly moved or the United States greatly shocked. But the American Consul, who hoped for an

American Samoa, became alarmed by the evidences of German intrigue, and he decided it to be his duty to thwart Teutonic ambition in the island. The breach between the United States and Germany in Samoa was thus begun, and English subjects in Apia took sides with the Americans against the greater rival.

Civil dissensions between various native factions continued unabated throughout the year 1878. The followers of Malietoa Telavu and the adherents to the old régime of the "Councils of the Chiefs" took to the bush, Samoan fashion, to glare at each other over their rude fortifications, to brandish fiercely their arms and to fill the forests with their war-cries. It was during this long period of strife that the foreigners in Apia for their own safety obtained from both warring factions the recognition of a strip of territory, including the municipality of Apia, as neutral and sacred from all hostile attack. Over this tract of land the three nations, which were in treaty relations with Samoa, were authorized to exercise the rights of extra-territoriality. In regard to the native wars, the three consuls in Apia proclaimed officially the strictest neutrality; but notwithstanding their determination to hold aloof from any participation in the troubled affairs of Samoa, their languishing trade interests compelled them to intervene. In the light of later Samoan history, it is not a little remarkable that all three consuls, backed by the concurrent opinions of several naval captains in the harbor, were enabled to unite in the selection of Malietoa Telavu as the ruler of Samoa. They thereupon threw the weight of their influence in his favor. Desultory fighting continued, nevertheless, for over a year, when peace was finally restored only by the interposition of Captain Deinhart of the German cruiser *Bismarck*.

Though peace had been accomplished by no less vigorous measures than a bombardment of native villages, Samoan politics continued in a most unsettled condition. The three consuls decided to take a still more active part in the management of local affairs, if for nothing more than to insure the stability of the government they had united in establish-

ing. Accordingly they entered into a compact with Malietoa Telavu, agreeing to support his government, he to accept three advisers,—a German, an Englishman, and an American. The successor of Telavu was to be chosen “by the three protecting powers” (March 24, 1880). Such an agreement as this bore all the earmarks of a protectorate; but both England and the United States declined to regard the agreement as more than a “scheme of arrangement between the consular body and the government of the islands for the protection of the foreigners.” Malietoa Telavu, however, was explicitly recognized as head of the Samoan Government, and upon his death in 1881, Malietoa Laupepa was recognized as his successor. On March 19, 1881, Laupepa was duly anointed king, according to native custom, and installed at Mulinuu, the royal seat of Samoa.

In some other islands of the group there was opposition to Laupepa. Possibly his too close association with the foreigners who sustained him displeased some of the “old party.” At all events, a native anti-administration faction crowned a certain high chief Tamasese as opposition king to Malietoa Laupepa, and the rifles and spears were again brought into use. Captain Gillis, of the U. S. S. *Lackawana*, happening in port, succeeded in quelling the rebellion by bringing about a compromise. Malietoa Laupepa was to remain king and Tamasese was created vice-king (July 12, 1881).

At last all native factions were appeased, and the consuls were reasonably in accord. Peace continued for several years; no one heard of Samoa's troubles; and seemingly all was well.

Those who profess to comprehend the untutored savage mind, maintain that primitive peoples cannot long remain in peace. Be that as it may, the period of rest from July, 1881 to the early part of 1885 proved to be only the calm that precedes the storm. With all due allowance for native vacillation and the savage's readiness for an affray, the foreigners in Apia must be held guilty for bringing about the troubles which followed, and the Germans must accept a little more than equal share in the guilt.

what an arrangement by natives - protectors -

III

A glance at the somewhat complex social conditions which existed at Apia in 1884-89, the years of greatest disturbance, is necessary to an understanding of the series of events which, beginning about that time, culminated in the tripartite treaty of Berlin.

The municipality of Apia was governed wholly by the consular representatives of England, Germany, and the United States; and the private property within this neutral area generally belonged to citizens of one or the other of these three powers residing and doing business in the islands. To the Samoans, Apia was, to all intents and purposes, a foreign city, over which they exercised no control whatever. Here was concentrated the wealth of the islands, and within the neutral zone at Mulinuu resided King Malietoa Laupepa and his Vice-King Tamasese, the nominal heads of a peculiarly weak and unstable government. In the environs of Apia in every direction the painted sign-posts of foreign property holdings stealthily advanced, sometimes moving on by night into the wilderness that surrounds the neutral strip of the municipality.

In Apia proper the foreign population was composed of three distinct elements, that quarrelled among themselves or united in friendship as their own separate and rival interests dictated. Of these three elements the German was the most aggressive and commanding. Their commercial interests in Samoa, embodied in the Godeffroy firm (reorganized into the "Deutsche Handels- und Plantagen-Gesellschaft für Südsee-Inseln zu Hamburg"), greatly exceeded those of the American and English residents combined. A vast amount of capital had been expended in improving their large plantations scattered throughout the islands, and their excellent trade had been established by thirty years of constant vigilance and toil. To the Germans in Apia, the prestige of their country and the success of their great "firm" had almost become synonymous terms. Nothing should be permitted to

check their company's growth,—not even an unfriendly native king. To “aid” in framing laws for Samoa, to incite a revolution, or to depose a hostile government, must be accepted as legitimate acts if the company's interest demanded them; in short, any means were permissible to that end. It is not to be wondered that the Germans regarded the American and English traders somewhat in the light that a game-keeper regards a poacher within his preserves. When the latter evinced a tendency to adopt their own tactics for influencing native legislation, the Germans resented their boldness, and bitter feelings were aroused; when they hinted at annexation, the Germans lost their equanimity of temper. The predominance of their commercial interests was their excuse for all acts of interference in native affairs, and in the passively hostile attitude which they sullenly maintained toward the other foreigners in Apia.

The English element was a smaller, but in some respects a no less active, one. On the veranda of the British consulate and at the counter of McArthur and Company they discussed with much feeling the growing influence of the Germans, and plotted for the advancement of their own business affairs. England was known to favor imperialism, and she was constantly alive for the absorption of new territory. Her ships ranged the seas, and her commanders were quick to act. With an avowed policy of expansion in London, the English residents felt their strength in Apia. They watched the Germans narrowly, and resented their meddling with the natives. They also had considerable influence over the latter, by reason of the activity of the London Missionary Society, whose workers in Samoa had succeeded in favorably impressing the religiously inclined aborigines.

The American element in Apia consisted of a mere handful of men who rallied around the premises of an American firm to denounce the German and English attempts to gain greater influence in the islands. Their trade was a growing one, but they felt hampered by the knowledge that the United States would probably never care to annex the group. It would be unfair to say that they always held aloof from

the purely domestic affairs of the Samoans, or that they constantly maintained that attitude of strict neutrality toward warring factions in the islands that the traditions of their country should have prompted them to observe. Theirs was the position of eager spectators whose interests led them from time to time to take a part in native politics, chiefly to thwart the machinations of their English and German neighbors.

In general, therefore, the one motive in Samoa was to acquire commercial advantage. When competition is fierce between citizens of several nationalities, in a neutral land and under a weak and dependent government, the temptation to secure a controlling influence in the councils of the nation becomes too great to withstand. It was impossible, under such conditions, for these commercial strugglers to eliminate the sense of patriotism from their efforts to increase their trade. Race prejudices were fed by business rivalry, and a clash was always imminent.

Each foreign faction was headed by a consul who was quick to discern the right and slow to detect any wrong in the acts of his "subjects." Under the laws of extraterritoriality these officials enjoyed considerable authority and power. They exercised judicial functions and supervised the governmental affairs of the municipality wherein those of their own nationality resided. In an advisory capacity they exerted a decided influence over the native government. As might be supposed, where all the elements were so favorable, political feelings were intense, and occasionally ran riot. The atmosphere was constantly charged with rumors of intrigue. The movements of native factions were keenly watched in the light of possible advantage to be gained by any threatened political change. Every act of the king or his vice-king was examined under the lens of a jealous interest, to determine whether it savored of preference for German, English, or American.

Besides these foreigners whose residence in Apia was ostensibly for legitimate purposes of trade, men of a lower social stratum, a bar-room riffraff of decidedly uncertain charac-

ter, infested the place. The South Sea Islands appear to furnish the conditions necessary to the development of an unprincipled class of men who are always ready to breed dissensions among native peoples, whom, by glibness of tongue, they influence to evil. Thieves profit by confusion. These adventurers, like stormy petrels scenting the tempest from afar, were a constant menace to peace in the islands.

King Malietoa Laupepa, installed in a shanty at Mulinuu, gloomily contemplated the shadow of his slender authority. He was thoroughly dependent upon the coöperation of the consuls to repress the little rebellions that sprang up like weeds in his garden. He was nevertheless much loved by his people. Laupepa has often been described as a gentle, lovable old man, of the most generous impulses, but pitifully weak. Tamasese, the vice-king possessed no distinctive qualities, either good or bad, and his popularity among his people was but luke-warm.

Out in the bush, a great chief and warrior, a man of high courage and principle, of large and enthusiastic following, Mataafa by name, rested upon his arms. He may be said to have been at that moment in a quiescent state. He was ambitious for the throne, disliked Tamasese and bore a strong friendship for his kinsman, Malietoa Laupepa.

Mataafa's personality was very striking, combining great vigor with a kindly, generous nature. He possessed a clear sense of justice, and was a good friend and a bad enemy. From childhood a curse rested upon this ambitious warrior. For some uncivil act he committed toward his elders he had been denounced by a relative who, as a prophet of evil fortune, cast upon him a future of great disappointment. Never should he rule Samoa, yet never should he rest from his vain efforts to reach the throne.

IV

During the earlier eighties the plantations of the German firm in the vicinity of Apia had been subject to petty pilferings of the natives. The managers of the company had made frequent complaints about these thefts; the German

Consul had demanded of Malietoa that he should warn his subjects more positively against midnight raids upon the German fruit trees. A number of light-fingered citizens had been caught in the act of making away with an armful of green cocoanuts or a bunch of bananas; they had been duly tried and sentenced to imprisonment, but it was discovered by the watchful Weber, the head of the firm, that the back door of the jail was open; Weber's convicts were not paying the full penalty of their misdemeanors. In October, 1884, the German Consul addressed a letter to King Malietoa, calling his attention to this lapse of justice, and suggested to him in no uncertain language that a continuation of such a condition of affairs would be accepted as an insult to the German Government. The Arcadian simplicity of Samoan life did not develop that fineness of discrimination between *meum* and *tuum* that the Teutonic representative in Apia believed should be observed. The king no doubt felt the delicacy of his position; it required more tact than Malietoa possessed to serve two masters at the same time. He attempted to reform his judiciary at a ruinous expense of popularity among his subjects, but his reforms were not sufficiently complete to meet the requirements of the exacting Germans; so Mr. Weber of the firm decided to constitute himself both judge and jailer of the realm. In the absence of the German Consul he arranged for a treaty between the Berlin and the Samoan governments which would virtually place the management of native affairs into his own hands. This document he placed before the astonished Malietoa, with a demand that he sign it blindfolded, or, to put it more clearly, before its provisions could become known to other foreigners in Apia. Some German men-of-war were in the harbor. The unfortunate monarch was at his wits' end. He hastily appealed to the representatives of England and the United States for protection; and to the queen of England he despatched a formal application for immediate annexation. The Germans in Apia were outraged by this display of independence on the part of the king; they pressed him the harder to sign the paper, and demanded an abject apology for

his delay and impertinence in consulting the English and Americans. Sorely harassed by threats, Malietoa yielded. In November he and his companion, Tamasese, appeared at the German consulate, made public humiliation in the dust, and signed Mr. Weber's treaty. Doubtless feeling himself to be between two evils (the German man-of-war on the one hand and the wrath of his subjects on the other), he appealed in his distress to the Emperor of Germany (December 29, 1884): —

I write to inform your Majesty that I am deeply distressed on account of the troublesome acts done by subjects of your country in Samoa.

I humbly beseech your Majesty to listen to my complaint.

The first matter of complaint of which I have to inform your Majesty is the agreement which was made on the 10th of November between the Government of Germany and the Government of Samoa. The method in which it was brought about was very improper, for we did not desire to make it because we were not allowed to see the documents so that we could consult about it and consider it.

I wrote to the German consul to ask him to give me a copy of the agreement, in order that we should thoroughly understand its meaning. He replied that he refused to give me or my government a copy of the agreement until after we had accepted it.

I assented to the agreement, and our names, Malietoa and Tupua, were signed to it on account of our intimidation by threats. I also inform your Majesty of our withdrawal from the agreement on account of its containing many impracticable clauses.

I therefore beg your Majesty will not assent to that agreement.

I also appeal to your Majesty with reference to the troublesome acts of Mr. Weber, a subject of your country.

He is continually trying to cause divisions among the people in order to bring about disturbances and war in Samoa. I have received much information respecting his working for the purpose of causing troubles to arise in Samoa again.

He is continually scheming and offering bribes to some Samoan chiefs to induce them to comply with his wishes, and thus cause a rebellion in my country.

I complain to your Majesty on account of this improper conduct of Mr. Weber, so that he may be compelled to desist from acts by which the blood of the people of my country may be shed.

I hope and pray that God will bless your Majesty and your Government.

I am, your Majesty,

MALIETOA, KING OF SAMOA.

No more effective state paper has ever been written, but the German Consul-General, Herr Steubel, was not the man to permit the advantage he had just gained to slip from his grasp. Resolving upon an extreme policy, at an opportune moment (emulating the example of a former American Consul), he hoisted the German flag over Mulinuu (January 23, 1885), and nailed to a tree the following interesting proclamation: —

Let all the people of Samoa observe during the long period that Malietoa has been king, the Government of Germany has been treated with unkindness and injury, and all agreements that have been made between the Governments of Germany and Samoa have been repeatedly violated. For that reason I must now make arrangements necessary for the protection of the subjects of my government and their possessions. This is my view of that which is necessary to be done: that I should take possession of the lands of the village and district of Apia, in which are included Mulinuu and the Harbor of Apia, to hold possession under the supreme control (that *was* under the Government of Malietoa) for the Government of Germany. This is the sign of this — I have hoisted the flag of His Imperial German Majesty in Mulinuu. This is the meaning of it (the hoisting of the flag), that only the Government of Germany will rule for the present over that portion of territory.

Samoans, I tell you now plainly, that it is only the territory that is called the Municipality that is taken possession of, but no other portion of land in Samoa is taken possession of.

It is good, too, that you should be well acquainted with the reason of that which is done. It is no unkindness at all to Samoa. The German Government only wish for Samoa to have a strong government that shall maintain cordial relations with the Government of Germany. When a peaceful solution of these difficulties is effected, the lands now taken possession of will be given up again.

I beseech you to be at peace and to have confidence in the Government of Germany and myself; then Samoa will indeed be prosperous.

DR. STEUBEL, IMPERIAL GERMAN CONSUL.

It might be presumed that Dr. Steubel needed rest after such an effort, but those lacking in humor seem never to tire; besides, this was Dr. Steubel's busy day. To Malietoa, he wrote: —

. . . Already, on the 4th of November [1884] your Highness wrote to me that the prisoners who in February, last year, escaped, in consequence of the order of your Government, out of the German prisons, would be brought back. Subsequently I made an agreement [the blindfold episode already referred to] with your Highness' Government. I supposed that difficulties which arose formerly would be removed thereby. Your Highness' Government, however, renewed the old inimical attitude towards Germany. Not all the prisoners were brought back, and those who were escaped again soon after, and your Highness' Government did not think of taking the trouble to return the prisoners. In a letter which your Highness wrote to me on the 20th of November you say that it is generally known that Samoa was to be taken by force by the German Government.

Since then the followers of your Highness . . . Seumanu and Lauati have repeatedly, in meetings, designated Germany as a robber land, and a country of slavery, and as a country without religion. . . . Germany can no longer look upon this state of affairs with equanimity. . . .

Hence the German flag-raising over the municipality. To the American and British consuls, who had at once protested against Dr. Steubel's assumption of authority, he wrote that by way of reprisal he had attached, in the name of the Imperial German Government, all the territory forming the municipality of Apia, as far as the rights of sovereignty of King Malietoa and his government are concerned, and that he would hold the same as security for the due fulfilment of existing treaty obligations by the Samoan Government.

Malietoa's apparent complacency in yielding to the importunities of the now cordially disliked Germans injured him in the eyes of his subjects. Tamasese hoped to profit by his disgrace, for ambition had flowered in his breast. The vice-king suddenly announced his separation from Malietoa's government, and he proceeded at once to set up his own emblem of sovereignty in a near-by village. A German mil-

itary officer, Captain Brandeis, arrived on the scene as a clerk of the German firm. He took up his residence with Tamasese, and began the process of tutoring that hopeful candidate for the throne.

In far-away Berlin, the Kaiser may possibly have been touched by Malietoa's pathetic letter, — at all events, he felt that his representatives in Samoa had gone too far. The German Government quickly disavowed any responsibility for the events of the past few months and for the conduct of Consul Steubel. Of the improper course of Mr. Weber (in reality a private citizen) it fully disapproved. Had the Germans in Apia thereupon promptly restored the *statu quo* of November, 1884, and then set about gaining their desired reforms in a less aggressive manner, possibly the humbling of the Samoan Government and the flag-raising incident at Mulinuu would have blown over as a harmless political squall; but they were not so disposed. Dr. Steubel kept his flag waving defiantly for twelve months, — throughout the entire year of 1885, — during which time the social relations of the three consuls and the citizens of the three powers residing at Apia were greatly strained. The American and English residents generally gave their sympathy to the much-abused Malietoa, and the Germans were more and more openly supporting Tamasese. Among the natives murmurings of discontent were heard on all sides. Two parties were formed — the followers of Malietoa and the followers of Tamasese. The position of the former at Mulinuu, so near the irrepressible Weber, who “rested not,” became too delicate even for the sensibilities of a barbarian, and he therefore moved into Apia proper, and raised his flag in more friendly surroundings. The German Consul at once pulled it down, and then the docile Malietoa quietly moved out of the foreign concession into one of his own native villages, and there once more raised his colors. Protests of the consuls became the order of the day.

In April, 1886, Admiral Knorr, commanding a squadron of three German vessels, arrived in port and opened negotiations with Tamasese, significantly ignoring Malietoa, whom

he addressed simply as "High Chief." Mistaking the object of the admiral's mission, Malietoa addressed to him a letter reviewing at great length the story of his sorrows. "Your Excellency," he concluded, "let the righteous dealing and the kind regard of the Government of Germany be manifest toward our islands, so feeble and so few." But the admiral's ear belonged to Dr. Steubel and not to Malietoa, and it was to Tamasese that he fired a royal salute.

The luckless Malietoa, now wholly discouraged and believing that the Germans seriously meant to crown his rival, directed another appeal to the American Consul for protection; and in reply to this the sympathetic Mr. Greenebaume unfurled the American colors over Apia, and proclaimed an American protectorate (May 14, 1886). An American and an English man-of-war arrived; the German flag was flying at Mulinuu over a proclamation setting forth that the municipality of Apia was under German control; the American flag fluttered over Apia above a document which warned all passers-by that Samoa was an American possession. Tamasese was in open revolt, with German encouragement behind him. Malietoa was gathering about him his clans on the other side of Apia, and the Americans and English were giving him consolation and selling him arms. The outlook was threatening.

V

The summary action of Consul Greenebaume in proclaiming a protectorate over Samoa disturbed the State Department at home. The situation seemed to call for the fulfilment by the United States of its obligation under the treaty of 1878, to use its good offices in behalf of the Samoan Government, although that obligation could scarcely be carried to the extent of lending its flag to the threatened ruler. Instructions were accordingly sent by the United States to its representatives at London and Berlin, to announce that the protectorate over Samoa set up by Consul Greenebaume was unauthorized. Recognizing, however, the seriousness of the situation in Apia, and desiring to remove all

causes of irritation between Germany and the United States, Secretary Bayard suggested a conference to the German and English ministers at Washington. This was made with the view of reaching some mutual understanding for the reestablishment of order in Samoa. The Secretary of State cannot be said to have gone too far in thus seeking to relieve the unfortunate condition of affairs in Apia. He recognized the dangers of a civil war in the islands where American and German sympathies were so keenly arrayed on different sides; and he probably realized the difficulty of keeping American residents at Apia in the straight and narrow path of neutrality should the threatened war break out. He met with a hearty response from both England and Germany, both of which powers probably shared with him a belief that their unruly subjects in Samoa were causing altogether too much trouble.

It was therefore agreed that before any definite steps should be taken, a commission, composed of an agent from each government, should visit the islands for the purpose of investigating and reporting upon their political and social conditions; thus, after more perfect knowledge had been gained of the needs the situation might call for, representatives of the interested governments would meet and take such action as seemed necessary. Mr. Bates, American, Mr. Thurston, English, and Mr. Travers, German, visited Samoa in the summer of 1886 as an international commission, and their reports were returned to their respective governments in the following spring.

News of the action of the three powers came to Apia none too soon. The tension was relieved by the shifting of responsibility beyond the seas. Preparations had to be hastily made for the arrival of the commissioners; the German flag came down, the American flag was folded and put away for another occasion; Tamasese was disowned and cast aside by his German protectors; Malietoa was urged into an agreement to keep the peace, which he was pledged to follow unless actually attacked by the rebel Tamasese. Finally, after much persuasion, the "Representatives of

Malietoa and *his Government*" and the "Representatives of Tamasese and *his Party*" were induced to sign an agreement of perpetual peace, to live "in friendship and cordial relations." When the commissioners stepped ashore on the beach at Apia, the temple of Janus was closed; outwardly, at least, the consuls had resumed friendly social relations.

The reports of the three commissioners were somewhat tinged by the prejudices which infected the air of Apia, but in essential details they agreed. The unanimous conclusion was reached that the natives were wholly incapable of maintaining a stable or efficient government. Their interests, as well as the interests of foreigners residing and doing business in Samoa, would be better served, they all declared, by the establishment of a form of government in which the three powers might exercise supervision. Armed by these documents, the Secretary of State and the British and German ministers at Washington, met in conference (June and July, 1887), to take up the task of "preserving order in Samoa."

The United States entered into these negotiations "to establish peace and a better understanding" with feelings of some hesitation, if not of diffidence, as if constrained into committing a second error in order to mitigate a former mistake. The administration had no desire to embarrass the country by assuming responsibility for good government in Samoa. The weak and helpless little nation had granted the United States a favor, and had asked in return the merest shadow of American protection; the time had come when the rights and the independence of this nation were threatened with extinction, and the good offices of the President had been invoked. American trade interests were not of sufficient importance to warrant a very large share of attention to the social or political affairs of Samoa.

Germany, whose paramount commercial interests gave her a livelier regard for Samoan affairs, was far more concerned in the political conditions of the islands, and she was, moreover, less hampered by conservative notions in her foreign relations. It is more than doubtful if she was genuinely interested in the welfare of Samoa. Her desire was mani-

festly to establish some form of governmental machinery in the islands that would not operate adversely to her commercial interests.

England regarded with disfavor Germany's growing influence in Polynesia, and entered into the negotiations with the sole idea of protecting her own trade in that part of the world. She may have desired as well to checkmate some of the suspected colonial schemes of the Kaiser.

Discussions at the conference which followed, soon developed wide divergencies of opinion. The German Minister favored a scheme to place the management of Samoan affairs in the hands of one foreign official, who should be chosen by the power having the greatest commercial interests in the islands, and who should be designated, "adviser to the king." This would of course establish German control; but Herr von Alvesleben contended that this was only proper in view of the larger German investments in the group. The plan proposed by the Secretary of State was that of an executive council, composed of the king, the vice-king, and three foreigners — an American, an English, and a German subject; but to this the German objected, as being no solution of the difficulty whatever. In this he was undoubtedly correct, as subsequent events have fully demonstrated, for the trouble, being entirely caused by the rival interest of three sets of foreigners, could in no wise be relieved by the addition of a second official head to each faction. For obvious reasons the German Minister's plan, though apparently favored by the English Minister, could not be accepted by the United States because of its somewhat false position of intermediary. Mr. Bayard declared that the German proposition was not in accord with the principles upon which they were to proceed, as it amounted to the reduction of Samoa to a German possession.

Failing to come to a conclusion, the conferences were closed for the time being (July 26, 1887), with the understanding that the political affairs of the islands should remain *in statu quo* until the members of the commission could meet again after having consulted further with their

home governments. Thus the matter rested, it being believed in Washington that the question would be readily adjusted within a few months, when the commissioners were again to meet.

VI

News of the adjournment of the conference without a definite conclusion no sooner reached Apia than the old reign of dissension began anew, and so vastly complicated became the situation in those turbulent little islands, that had not the greater forces of nature intervened at a most critical moment, it is possible a war between Germany and the United States might have resulted. For their hasty acts of the previous year, Consuls Steubel and Greenebaume had been dismissed, and were replaced by Herr Becker and Mr. Harold M. Sewall respectively. The former entered upon his duties as German Consul with a determination to follow to its rational conclusion the policy Steubel had inaugurated; his aim was to complete the task that his predecessor had been forced to abandon. This he set about doing with a lofty disregard for the Washington agreement just entered into by the representatives of the three powers. Malietoa had already been marked as a victim by Steubel, on account of his supposed unfriendly attitude toward the Germans, but circumstances had prevented the former consul from perfecting his plans; he was still recognized as the lawful sovereign by England and the United States, and Tamasese had perforce been abandoned by Steubel at a moment when his scheming had almost succeeded in making him king.

Mr. Becker immediately cast about him to discover a good excuse for stripping the unfortunate Malietoa of the last vestige of his power. Some glaring misdeed, still better an atrocity, was needed. It was found, though a slender one. About six months before this time, in a bar-room brawl, some German sailors had fallen into an altercation with a few natives, and a rough-and-tumble fracas ensued, out of which all parties emerged with bruises. The natives who had participated in this "riot" were found guilty of assault

by the German municipal judge, and although the event had taken place within the limits of Apia, and therefore without the jurisdiction of the native king, Malietoa was held responsible for the outrage of "trampling upon the German Emperor." This event had taken place previous to the Washington conference, but at the time it was not seriously considered. It was now suddenly revived. Before the king could more than catch his breath to reply, Becker declared war upon him "by order of His Majesty, the Emperor of Germany." Like the opportune happenings of a fairy tale, four German men-of-war appeared in the harbor. In less than a month from the closing of the conference in Washington, war was declared by Germany upon Malietoa, martial law was proclaimed in Apia, and Tamasese was heralded as king.

Mr. Sewall and the English Consul at once came forward to protest: —

Whereas the Government of Germany has this day proclaimed Tamasese King of Samoa,

Now, therefore, we, the undersigned representatives of the United States of America and Great Britain, hereby give notice that we and our governments do not and never have recognized Tamasese as King of Samoa, but continue as heretofore to recognize Malietoa.

We advise all Samoans to submit quietly to what they cannot help; not to fight, whatever the provocation, but to await peaceably the result of the deliberations now in progress, which alone can determine the future of Samoa.

The stroke having now been given in earnest, the German Consul determined to prosecute his campaign with the utmost vigor. In the hope of winning recruits by means of oratory, Tamasese stump speakers were conveyed on German vessels to different islands to harangue the natives; in certain towns where the orators were coldly received, the discourteous villagers were shelled by the gunboats. Upon declaration of war, Malietoa hastily took to the bush, and his supporters began to rally about him. Captain Brandeis proceeded to fortify Tamasese's position at Mulinuu. The

chief Mataafa with his warriors then emerged from his solitude and went to Malietoa's aid.

With such important and exciting events in progress, it could scarcely be expected that the foreigners in Apia should remain calm. As Becker made no concealment of the object of his schemes,—to get rid of Malietoa and to crown Tamasese as his own puppet king,—the American and English spectators soon became bluntly outspoken; the employees of the German firm assumed a swaggering demeanor; the Americans and English used insulting language.

The first object of the German Admiral, as ranking officer among the Germans, was to capture Malietoa. He issued an invitation to him to surrender, coupled with threats of vengeance upon his people if he declined the invitation. In September (1887), the thoroughly cowed king answered the summons in person, having first turned over the care of his people to his powerful ally, Mataafa. The entrance of the sorrowful Laupepa into Apia as a prisoner of war was a tearful event. In a farewell address to his followers he said:—

On account of my great love to my country, and my great affection to all Samoa, this is the reason that I deliver up my body to the German Government. That Government may do as they wish with me. The reason of this is because I do not desire that the blood of Samoa shall be spilt for me again. But I do not know what is my offence which has caused their anger to me and to my country. . . . Taumasanga, farewell; Manono and family, farewell. So, also, Salafai, Tutuila, Ansa, and Atua, farewell.

To Mr. Sewall, who he believed should have more vigorously exerted the "good offices" heretofore mentioned, he wrote:—

When the chief Tamasese and others first moved the present troubles, it was my wish to punish them and put an end to the rebellion, but I yielded to the advice of the British and American consuls. Assistance and protection was repeatedly promised to me and my government if I abstained from bringing war upon my country. Relying upon these promises, I did not put down the rebellion. Now I find that war has been made upon me by

the Emperor of Germany, and Tamasese has been proclaimed King of Samoa. I desire to remind you of the promise so frequently made by your government, and trust that you will so far redeem them as to cause the lives and liberties of my chiefs and people to be respected.

As a hero, then, amid the lamentations of his people, Malietoa Laupepa was deported in exile to distant lands. For several years he disappears from view.

These events occurring in the face of the agreement to leave Samoa matters *in statu quo* were not overlooked at Washington. The action of the Germans was clearly in contempt of this mutual understanding. There is a positiveness in German manners, which, although not intended to give offence, is sometimes as irritating as an unfriendly act. The Secretary of State was annoyed by the dash Mr. Becker had taken into forbidden fields, but he felt more offended by the arrogance of his authority. In the ensuing correspondence, Bismarck persistently laid the blame upon the American consuls, one and all, whose conduct in Apia, he declared, had always been hostile to German interests. Secretary Bayard could only reply that it was the German and not the American consuls who had brought about Samoa's troubles.

With Malietoa out of the way, the main obstacle to the success of Becker's plans was removed. Mataafa, however, was arming; but Tamasese was already armed, the alert Brandeis having looked to that. The next step was to silence the American and English consuls who were openly hostile to his schemes. It will be remembered that the port of Apia and a narrow strip of land on either side were neutral territory over which the three powers exercised the right of extraterritoriality. The municipality was governed by a tripartite arrangement, the citizens of the three powers presumably sharing about equally the control of urban affairs, and enjoying in equal proportion the spoils of office. The judge of the municipal court at this time was a German subject whose term had some time since elapsed, and who should have been succeeded by an American, according to the stipulated system of rotation in office. An Anglo-Saxon judge was

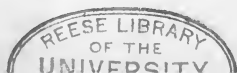
not what the Germans in Apia wanted at that particular juncture, so Mr. Becker began a process of elbowing out the foreigners from the councils of the municipality. To accomplish this task satisfactorily required some very skilful manœuvring, but Mr. Becker was fully equal to the occasion. For some weeks, with various excuses, he absented himself from the regular consular meetings, thus preventing the necessary quorum for the consideration of municipal affairs. Finally appearing at an appointed meeting, he took advantage of the fact that the American Consul, Mr. Sewall, was not present, although it is believed he knew that the belated official was hastening to the meeting. He quickly left for his home to write a letter to Mr. Sewall, in which he said that he regretted to be obliged to consider the municipal government to be in abeyance, "since you have refused to take part in the meeting." By resort to such a doubtful method, he succeeded in abrogating the neutrality of Apia, while he instantly became deaf to all the protests and denunciations showered upon him by the indignant Americans. He duly announced that Apia was Samoan territory, over which Tamasese ruled.

The German flag still flying at Mulinuu no longer trespassed therefore upon neutral territory; the king himself resided in a German house on German land; the king governed Apia, and the Germans controlled the king. To cap the climax, Tamasese appointed a German judge to preside over the courts of Apia. Captain Brandeis was made Prime Minister, and Mr. Weber, of the German firm, was the power behind the throne. At last German persistence was crowned with full and complete success.

The Tamasese-Brandeis Government continued in active operation from the latter part of 1887 until September 1888, when its career drew to a sanguinary close. After the excitements of revolution were well over, and the ruffled tempers of the foreigners in Apia had had time to subside, it was found that the new government was not a wholly bad one after all. Brandeis appears to have been a man of considerable ability and, for a professional instigator of

revolution, one possessing a fair sense of justice. It seems to have been his aim to administer his government with strict impartiality toward the business interests of the several nationalities. Roads were built; taxes, though somewhat excessive, were well applied, and many needed reforms were instigated. Indeed, many of the foreigners in Apia who had bitterly opposed the change gradually became reconciled to the new conditions. But the fault of the Tamasese-Brandeis Government lay in its origin. In the nature of things it could not last. The seizure and deportation of Malietoa never ceased to rankle in native breasts, and back in the forests plots were continually hatching against Tamasese and German rule. No government, in fact, that strictly enforced its decrees could long remain popular with the easy-going Samoans. From day to day dissatisfied natives drifted into Mataafa's camp, for Mataafa had Malietoa blood in his veins, and stood for the vindication of his exiled kinsman.

The ambitious Tamasese, within the limits of his circumscribed powers, like the beggar on horseback, rode too hard. He had gained honors, and he craved distinction. He began assuming honorific titles, finally dubbing himself with the highest of them all, the sacred name of "Malietoa." The allegiance of many of Tamasese's own best supporters was at best none too sure, and a host of these became indignant with their monarch for this unholy folly. The clansmen of Malietoa, who regarded Tamasese as a mere usurper, shielded by German forces, felt their tenderest sentiments outraged. The one consistent and uncompromising enemy to the new régime in Apia was the American Consul, Mr. Sewall. The Tamasese-Brandeis Government had been conceived in a spirit of unfriendliness to his country, and had been planned and executed by the Germans in disregard of their obligations. In fact, it was being maintained in defiance of his own protests, and the complaints of his Secretary of State. He felt himself to have been hoodwinked in the abrogation of the neutrality of Apia, and he could not forgive Becker for his duplicity.



In August, 1888, Mataafa suddenly became aggressive and made an attack, though unsuccessful, upon Tamasese at Mulinuu, and then retired to marshal his strength for another assault. Instantly all the suppressed antipathies of the two parties in the islands rekindled,—the Tamaseses rallied about the king at Mulinuu; Brandeis dug trenches in active preparation to meet the coming assaults. From neighboring islands the sympathizers of Mataafa came in their canoes to share in the threatened conflict. In Apia the price of arms and ammunition reached a fabulous figure, and could only then be bought by the natives upon a declaration showing on which side they were to be used.

To strike terror into the hearts of the “rebels,” the German warship *Adler* proceeded to bombard native villages along the coast that were known to favor Mataafa. It was then that Commander Leary of the U. S. S. *Adams* addressed a letter to the German captain which was calculated to remove all doubt as to which side in the coming contest he and the American citizens in Apia had given their sympathies. He said: “The revolutionists had an armed force in the field, within a few miles of this harbor, when the vessels under your command transported the Tamasese troops to a neighboring island with the avowed intention of making war on the isolated homes of the women and children of the enemy. Being the only other representative of a naval power now present in this harbor, for the sake of humanity, I hereby respectfully and solemnly protest in the name of the United States of America, and of the civilized world in general, against the use of a national war vessel for services as were yesterday rendered by the German corvette *Adler*.” This well-directed protest was followed by a series of thrusts on the part of Commander Leary that stung the German Captain’s temper. The best of jokes may be pushed too far, and in this respect Commander Leary probably transgressed. His final offence, by inviting through inference or implication, the commander of the *Adler* to meet him in combat, in no way relieved the tension. Upon this particular occasion the German man-of-war had taken position to bombard a native village, and Leary

steamed in between him and the shore, announcing that if the German commander intended to carry out his purpose he would be obliged to fire through the *Adams*.

In September, 1888, Mataafa, having been crowned king by his own supporters, led another attack upon the government forces under Tamasese and Brandeis which were intrenched upon either side of Apia. The battle of Matautu (September 12) raged all day and well into the night, and was perhaps the greatest battle ever fought upon the islands. The amount of ammunition expended is said to have been something quite extraordinary, and "the noise deafening"; when the smoke cleared away the government forces were found to have been driven back into their stronghold of Mulinuu. Only about forty dead were left upon the field, no doubt a humiliating disappointment to both sides.

With American and English sympathy avowedly in favor of Mataafa and hostile to the Germans, social relations in Apia were rapidly reaching an uncomfortable stage. Those ordinary amenities that render endurable the association of men of opposing interests were cast aside. Opportunities came daily for the commission of unfriendly acts which served to inflame further the growing enmity of Germans and Americans. For example; one Scanlon, an American half-cast, owned a house near Mulinuu which was raided by Tamasese men, more for the purpose of adding Scanlon's pigs to their rations than on account of any especial ill-feeling toward Scanlon himself. The matter came before Commander Leary, who welcomed an incident that furnished another excuse for an adventure. With military pomp and a show of force he occupied the Scanlon house and declared his intention of shelling Tamasese across the way. The Germans were greatly outraged by this "meddling" in Samoan affairs, but they nevertheless advised the king to shift his quarters. It was thus by American threats that Tamasese and his warriors were obliged to abandon their fortified position at Mulinuu and take to the bush. Then it may be said the point of war was almost reached between the supporters of

the two native factions,—the Germans and Americans in Apia. So critical indeed had the situation become, that the various consulates were converted into veritable fortresses for the refuge of their citizens.

After a series of inconclusive skirmishes between the forces of Mataafa and Tamasese, Dr. Knappe, the German Consul (Becker had been recalled), decided upon a final stroke,—to disarm and probably capture Mataafa. In the small hours of the morning of December 18, 1888, a force of 150 marines was silently landed from the German war vessel and was proceeding inland when suddenly the woods became alive with Mataafa warriors. The squad of blue-jackets only retired after a desperate struggle, leaving 50 dead and wounded in the jungle. The following telegram reached Washington soon after :—

Three war ships undertaken to disarm Mataafa. Landed at night force to prevent retreat. Mataafa's men fired on and forced to fight. Germans routed. Twenty killed, thirty wounded. Germans swear vengeance. Shelling and burning indiscriminately regardless of American property. Protest unheeded. Natives exasperated. Foreigners' lives and property in greatest danger. Germans respect no neutral territory. Americans in boats flying. American flag seized in Apia harbor by armed German boats, but released. Admiral with squadron necessary immediately.

The Mataafans were jubilant. They had made a great and valuable discovery, as had the Caribs of Porto Rico when they held a Spaniard under water to discover whether or not white men bore a charmed life.

If the relations between the Anglo-Saxons and Teutons in Apia had been bad before, they now became worse. Herr Knappe accused the American and English consuls of complicity in the massacre of German soldiers, and a volume of native testimony was adduced to prove the charge. Whatever might be the value of a native oath, it is certain that the English Consul, Mr. de Coetlogon, did not give a signal to the natives at the time of the landing of marines from the *Adler*,

and it is equally certain that the American Vice-Consul, Mr. Blacklock, did not set a trap for the luckless German blue-jackets. The infuriated Knappe, goaded to desperation by the miscarriage of his plans, determined upon immediate revenge, and he prepared for an active campaign against Mataafa. He began by proclaiming martial law over Apia, including Americans and English under its operation. They declined to heed the proclamation. Such were the social conditions in Apia at this trying period, that when the British Consul protested against German martial law over his subjects, Dr. Knappe replied: "I have had the honor of receiving your Excellency's agreeable communication of to-day. Since, on the ground of received instructions, martial law has been declared in Samoa, British subjects, as well as others, fall under its application. I warn you, therefore, to abstain from such a proclamation as you announce in your letter. It will be such a piece of business as shall make yourself answerable under martial law. Besides, your proclamation will be disregarded."

Accounts of the desperate condition of affairs in Apia needed none of the usual colorings of sensational journalism to excite the people of the United States. In its plain, unvarnished recital it was sufficient to create alarm; Germany had broken her pledge; the American flag had practically been fired upon. War with Germany was seriously discussed. The truth of the war rumors which spread over the country was apparently corroborated, both by the firm attitude of the government at Washington, and by the immediate reënforcement of the American fleet in Samoa.

In answer to Vice-Consul Blacklock's stirring cable, Admiral Kimberly was hurriedly sent to Apia. He arrived on the U. S. S. *Trenton*, in March (1889), and found a formidable array of warships anchored in the harbor, all cleared for action and awaiting developments. Upon this bellicose scene, a bolt, as from heaven, fell. The imagination could supply no more dramatic sequel to this gathering of warships. A hurricane (March 16) destroyed all the vessels in the harbor save one, the *Calliope* (English),

which, after a memorable battle against the elements, succeeded in safely steaming out to sea. In the common disaster, all belligerents forgot their quarrels and animosities; Mataafans hastened to the relief of German sailors, and Tamaseses heroically rescued Americans. The power of Germany and of the United States in Samoa was thus suddenly and utterly broken. The great storm cleansed and sweetened the torrid air of Apia. Seemingly, providence, according to its own methods, had undertaken to cure the Samoan distemper. Before this terrible catastrophe had arrived, however, the Samoan imbroglio had again fallen into the hands of the three powers for adjustment.

VII

It is pleasing to note a prevailing calmness of tone in the official correspondence between Washington and Berlin during this period (1887-89), relative to Samoa. It contrasts strongly with the feverish and hysterical temper of the communications between the consuls in Apia, and in letters to their home governments. Mr. Bayard and Mr. Blaine on the one hand, and Prince Bismarck on the other, were continually prodded by communications from Apia sounding many alarms and craving sanction for many deeds of doubtful propriety. The communications passing between these premiers indicate, almost without exception, a desire for moderation. Each hopes that the impetuosity of his excited officials in Samoa may be pardoned, in order that the questions at issue may amicably be settled. Between the lines of these formal despatches a trace of weariness may often be detected, which might render a fairly correct reading, despite the actual words used, to be, "They are at it again; will they never stop? Your men have done wrong; control them better, and I shall try to control mine;" and finally, "It is of no use; we must ourselves settle their difficulties, and over their heads, — let us meet for the purpose."

In October, 1887, Mr. Bayard cabled to Berlin that the state of affairs in Samoa "is very distressing, and can only

be made worse by a continuation of the war"; that Mr. Sewall has been instructed to "preserve a strict neutrality"; and suggests the "advisability of the immediate election of a king and a vice-king, as agreed to in the conference." The reply that "all the important chiefs who had assembled had formally recognized Tamasese as king," indicates a misconception in Berlin of the true situation in Samoa. "The conduct of Malietoa," said Bismarck, "had become unbearable, maltreating the Germans, and finally permitting outrages upon those who were properly celebrating the birthday of the emperor [the prince referred to the bar-room brawl before mentioned]; that the German Government had determined to deal with him personally." On January 17, 1888, Mr. Bayard forwarded to the United States Minister in Berlin a long communication, reviewing in detail the events in Samoa following the adjournment of the commission, and complaining of the course of the German representative in Apia. This unwarranted course consisted in forcibly creating Tamasese king, in abrogating the neutrality of the port, and in ignoring the protests of the American Consul—all alleged to be in derogation of the understanding of the three powers to leave the situation *in statu quo* until a final settlement. Mr. Bayard continued:—

The conclusion at which I am forced to arrive from the review of recent events in Samoa is that the present unfortunate situation there is due not to any action on the part of the representative of the United States, but to the fomentation by interested foreigners of native dissensions, and to the desire exhibited in a marked degree by those in charge of local German interests to obtain personal and commercial advantages and political supremacy.

Closing the despatch, he said:—

Owing, doubtless, to her commercial preponderance in the islands, to Germany the primary object has seemed to be the establishment of a stronger government. To the United States, the object first in importance has seemed to be the preservation of native independence and autonomy. And so regarding the matter, this Government, while not questioning Germany's assur-

ances of the absence of any intention on her part to annex or establish a protectorate over the islands, has been compelled to dissent from propositions which seemed to subordinate all other considerations to the strengthening of the German commercial and landed interests in the islands, and correspondingly to diminish, if not entirely to destroy, the probability of the establishment of a Samoan Government, and of the neutralization of the group, at least in respect to the powers now immediately concerned.

During the peaceful continuance of the Tamasese Government, until the autumn of 1888, but few despatches of real importance concerning Samoan matters passed between the powers. Both England and the United States felt dissatisfied with the situation; and while resenting the action of Germany in overturning the native government and setting up a king of their own choosing, they appeared to be adverse to further interference, so long as affairs in the islands moved along smoothly, and the new government gave reasonable satisfaction to all parties. In the autumn of 1888, however, when Mataafa entered upon the scene in open rebellion against Tamasese and the German régime, the questions of neutrality and of German aggression were reopened. Mr. Bayard wrote to Berlin, November 21, 1888, that as often stated theretofore, "the desire of this Government is to see a lawful and orderly condition of affairs established in Samoa, under a government freely chosen by the Samoan people. As to what chief may be at the head of that government, it is to this government a matter of indifference. . . . If any cause of complaint should arise out of differences between the consuls at Apia, the matter should be taken up by their respective governments, and settled at once directly between them and not be left to be the subject of contention in Samoa."

As the revolution progressed, and the situation in Apia became more acute, the communications between the powers took on a slight degree of petulance. Count Arco-Valley, the German Minister in Washington, reported to the State Department, January 10, 1889, that : —

The German forces were landed after the German commander had given notice of his intention to the commanders of the American and British men-of-war, the reason for landing being that some German plantations were in danger.

Upon so landing, the Germans were attacked by the Samoans under the command of Klein [a newspaper correspondent], an American citizen, and lost fifty men killed and wounded. A state of war with Samoa is therefore announced by Germany, and as an American is alleged to have been in command of the attacking Samoan force, Count Arco is instructed to make complaint to the United States.

Count Arco is also ordered at the same time by his government to say that the treaty rights of the United States shall be respected under all circumstances, and all the rights of the treaty powers.

The German Government also begs the United States to join them in an active way to restore calm and quiet in the island—equally for the three treaty powers.

Mr. Bayard disclaimed any responsibility for Klein, and called Count Arco-Valley's attention to the agreement of the three powers in 1887 to leave to the Samoans the free election of a king according to their own will and custom. He added (January 12, 1889):—

It would seem most opportune if such an election could now practically be held, and I feel assured that it would do much towards ending the turbulent and bitter discontent which has led to the shocking internecine warfare among these islanders, and finally involved them in a deeply regrettable conflict with German forces, which is sincerely deplored by the United States.

Prince Bismarck was less complaisant. On January 13, (1889), he wrote, in reference to the midnight raid of the German blue-jackets:—

. . . This unprovoked attack is said to have taken place under the leadership of an American named Klein. On this occasion more than fifty German soldiers and officers were killed and wounded.

In consequence of this we have been transplanted from the territory of mediatorial negotiations, by which the imperial consul in

Apia was trying to reconcile the contending parties, and for which he had sought the coöperation of his English and American colleagues, into a state of war with the assailants, to our regret.

We shall carry on the contest which has been forced upon us by Mataafa and his followers, with the utmost consideration for English and American interests. Our military measures have in view only the punishment of the murderers of German soldiers and the protection of our countrymen and their property. As they, on their part, are at war with Tamasese, our interference will necessarily assume the character of assistance to Tamasese. . . .

The words "unprovoked attack" and the "murder" of German soldiers, are especially interesting, in the light of the fact that the armed marines were admittedly landed with hostile intent. It seems almost unworthy of the man of blood and iron to refer to the defeat of his troops in legitimate warfare as a "murderous crime." What if, in the darkness of that night, those same marines had succeeded in surprising their enemy, and had fallen upon the guard of Mataafa? Would it have been a "murderous crime" or merely a "regrettable incident"?

Count Arco-Valley complained that the task of settling these difficulties by amicable arrangement "has been rendered difficult by the fact that the officer in charge of the American consulate and the commander of the American war vessel [Leary] have, during the present revolution on the Samoan Islands, openly taken part against Chief Tamasese, who is recognized by the imperial government, and have supported Mataafa." In this the count may not have been so very far from the truth, and Mr. Bayard in his reply was also substantially correct in saying that "neither of these officers has assumed on behalf of the Government of the United States, to recognize Chief Mataafa, or to do any act contrary to the rival claims of Chief Tamasese, other than to take necessary steps to protect Americans and their interest in those islands." In the same communication (January 18, 1889) he sounded the key-note of the American policy in Samoa as follows:—

Deep as is the regret felt by this Government for the lamentable conflicts which have lately taken place between Germans and the adherents of one of the native factions in Samoa, and however sincere our hope that the unfortunate occurrence may be satisfactorily settled, this Government continues to feel it to be its duty to maintain its attitude of consistent neutrality, and not abandon the belief professed and acted upon for three years or more, that the best assurance of peace and guaranty for the equal protection of the rights of the three treaty powers in Samoa will be found in permitting and assisting the natives freely to choose their own king, who should be recognized by the three powers and assisted by them in the administration of good government.

In closing the letter, he urged that : —

The objection to Tamasese is wholly on the part of the preponderating number of his own countrymen who deny that he was ever chosen by popular will, or that he is acceptable to them ; to insist, therefore, upon his rule is to substitute the will of foreigners for the Samoan native government for which the majority have manifested their strong desire and which the treaty powers had certainly agreed to respect.

When news of Dr. Knappe's proclamation of martial law reached Washington and Berlin, Secretary Bayard protested vigorously, and Bismarck realized that his energetic officer in Apia was over zealous. On February 1 he addressed the State Department: —

When the state of war was declared against Mataafa the commander of the German squadron issued a proclamation by which the foreigners established in Samoa were subjected to martial law. International law would, to a certain extent, not prevent such a measure, but as Prince Bismarck is of the opinion that our military authority has gone too far in this instance, the military commander has received telegraphic orders to withdraw the part of his proclamation concerning foreigners.

In negotiation with Mataafa our consul at Samoa has asked that the administration of the islands of Samoa might be temporarily handed over to him, which demand not being in conformity to our previous promises regarding the neutrality and independence of Samoa, Mr. Knappe has been ordered by telegram to withdraw immediately his demand.

This seemed indeed to be a very large concession from Prince Bismarck; clearly he was not in accord with Dr. Knappe's scheme to gain political control of the group, or, if so, he disapproved of the consul's methods. Becker and Knappe had played a high-handed game in Samoa, and had lost, and Bismarck seems to have become weary of the sham that was being conducted in the name of Germany. On February 4, he instructed the minister in Washington to represent to the Secretary of State that:—

The present situation in Samoa regarding the interests of the three treaty powers renders it necessary to renew the attempt to bring the future of those islands to an understanding.

The position of the three treaty powers in the civilized world makes it their duty to stop the bloody combat accompanied by barbarous customs of those not numerous tribes, for whose welfare, according to the judgment of the civilized world, it is a duty of the treaty powers to provide.

Prince Bismarck, in consequence, considers it a duty of the participating governments to put an end, by the agreement of the treaty powers, to the troubles which have originated in Samoa, and by restitution of peace among the Samoans themselves, and so make an end of future bloodshed and the horrors of a civil war conducted with barbarous cruelty among the natives.

The best remedy seems to be a resumption of the consultation which took place between the representatives of Germany, England, and the United States, in the year 1887, at Washington, and at that time adjourned without any possibility of their representatives coming to any agreement.

In consequence, I have been requested by Prince Bismarck to propose to you to resume with Germany and the British Government the consultation regarding the Samoan question. . . .

Thus Germany opened the door and the United States most willingly entered. Mr. Bayard's reply was ready the following day (February 5th): "The President . . . requests me to say that he fully shares in the desire expressed by the prince chancellor to bring the blessings of peace and order to the remote and feeble community of semi-civilized people inhabiting the islands of Samoa; and that he clearly recognizes the duty of the powerful nations of Christendom to deal with these

people in a spirit of magnanimity and benevolence." "The sooner this conference can be resumed, the better," he added.

John A. Kasson of Iowa, William Walter Phelps of New Jersey, and George H. Bates (the former commissioner to Samoa) were appointed United States commissioners to meet in Berlin similarly qualified plenipotentiaries of Germany and Great Britain. The spirit of their instructions was embodied in two short sentences: "The obligation of the United States in the South Pacific is to protect the rights and interests of American citizens who may be residents there, and engaged in lawful pursuits. We have no desire to dominate." The commission was instructed by Mr. Blaine:—

First, To ask the restoration of the *status quo*. While the President was unwilling to consider that action of Germany, which immediately followed the suspension of the conferences at Washington, as intentionally derogatory either to the dignity or the interests of the other treaty powers, yet he could not but regard it, under the circumstances, as an abrupt breach of the joint relations of the three powers.

Second, To seek for the organization of a stable governmental system for the islands, whereby native independence and autonomy should be preserved free from the control or the preponderating influence of any foreign government; and also free "from all occasions of trouble arising from and fostered into mischievous activity by the avarice and eagerness of competing merchants and land speculators, and the irregular conduct of foreign officials, who are, perhaps naturally and excusably, but most injudiciously sympathetic with the prejudices and immediate interests of their resident countrymen."

Third, To effect some system of adjustment and registry of land claims.

Fourth, To seek the adoption of some form of regulations for the importation and sale of fire-arms and alcoholic liquors, that fatal combination where peace is desired.

Fifth, To use discretionary powers in adjusting the questions of neutrality and government in the municipality of Apia.

The commission met in Berlin, April 29, 1889. Prince Bismarck was chosen to preside over the meetings, which continued until June 14, on which day the General Act of Berlin was signed by the plenipotentiaries. During the course of the discussion (at the 5th session, on May 22d), Mr. Kasson introduced the subject of restoring the *status quo* in Samoa. Prince Bismarck replied that the principle of election in the choice of a king by the natives was acceptable to him, but that he was bound to make one exception in the person of Mataafa, on account of the outrages committed by his adherents, and under his authority, upon dead and wounded German sailors lying on the field of action. Sir Edward Malet, (English) thought the exception fair and reasonable, and suggested that as Malietoa had been released by Germany, "we, therefore, propose that in the interest of the peace and the prosperity of the islands, it should be intimated to the Samoan people that if they will take Malietoa as king, such act on the part of the Samoans shall receive the sanction of the treaty powers."

This seemed to all parties a good solution of the difficulty. With two rival chieftains in the field (Mataafa and Tamasese), it was felt that if the first selection of a ruler under the new system were left to the natives, it would certainly lead to a renewal of civil war. As Mataafa was *persona non grata* to the Germans, and Tamasese's influence among the natives was waning, the restored Malietoa appeared to be the logical candidate. His former popularity in the islands would no doubt be enhanced by the martyrdom he had suffered in his country's cause, and he was moreover entirely acceptable to the three treaty powers. Sir Edward Malet's proposal was referred to a committee on revision, and subsequently adopted.

This first restriction in the "autonomous" scheme of government for Samoa proved a mistake, as future events showed. It would probably have been wiser in the end had Bismarck overcome his very natural prejudice to Mataafa and permitted the natives from the beginning a freer rein in the choice of their king.

The treaty as finally ratified provided an elaborate system of government for the islands, and the United States stood pledged, for the first time in its history, to share the responsibilities of good government in another nation and to assume, in a measure, the rôle of protector.

It will be seen that a variety of causes, leading step by step, in the settlement of the Samoan difficulty, induced the United States to ignore those precedents which the wisdom of its earlier statesmen had established. American trade relations in Samoa were comparatively insignificant, and the number of American citizens residing there was ridiculously small. From a political point of view, the Samoans were like children, and it was recognized, both at Washington in 1887, and at Berlin in 1889, that a purely native government could not maintain itself. No two of the powers would consent to invest the other with exclusive control, so the only possible solution of the problem seemed to be a tripartite agreement to establish and support some form of government at Apia in which all three powers would participate.

But just there lay the weakness, perhaps the folly, of the American attitude toward the whole question; it was fear that the rule of another nation in Samoa would operate adversely to the private interests of American citizens in Apia. It would have been far more economical, if expense is a consideration, to have bought outright all the American private interests in the islands, or indeed, from a sentimental standpoint, if the sense of ownership is pleasant, to have bargained with Germany and England for American annexation of the group. Possibly an altruistic desire to promote the happiness and welfare of the natives by aiding them in the establishment of good government may have influenced the United States to some extent, but this supposition will not bear too close analysis. Nations do not scatter the seeds of philanthropy broadcast, but are far more likely to plant their crops where the soil is good or the position is advantageous for military or other good reasons. At all events, the United States drifted out of an old channel into a new one. In signing the treaty of Berlin, the American nation entered

into an "entangling alliance" with foreign powers that at once involved it in foreign political affairs that concerned it the very least.

In substance the General Act of Berlin provides as follows:—

ARTICLE I

A declaration respecting the independence and neutrality of the islands of Samoa, and assuring to the respective citizens and subjects of the signatory powers equality of rights in said islands, and providing for the immediate restoration of peace and order therein.

It is declared that the islands of Samoa are neutral territory, in which the citizens and subjects of the three signatory powers have equal rights of residence, trade, and personal protection. The three powers recognize the independence of the Samoan Government and the free right of the natives to elect their chief or king and choose their form of government according to their own laws and customs. Neither of the powers shall exercise any separate control over the islands or the government thereof.

It is further declared, with a view to the prompt restoration of peace and good order in the said islands, and in view of the difficulties which would surround an election in the present disordered condition of their government, that Malietoa Laupepa, who was formally made and appointed king, on the 12th day of July, 1881, and was so recognized by the three powers, shall again be so recognized hereafter in the exercise of such authority unless the three powers shall by common accord otherwise declare; and his successor shall be duly elected according to the laws and customs of Samoa.

ARTICLE II

A declaration respecting the modification of existing treaties and the assent of the Samoan Government to this act.

ARTICLE III

A declaration respecting the establishment of a supreme court of justice for Samoa and defining its jurisdiction.

Section 1. A supreme court shall be established in Samoa, to consist of one judge, who shall be styled chief justice of Samoa, and who shall appoint a clerk and a marshal of the court. . . .

Section 2. With a view to secure judicial independence and the equal consideration of the rights of all parties, irrespective of nationality, it is agreed that the chief justice shall be named by the three signatory powers in common accord; or, failing their agreement, he may be named by the King of Sweden and Norway. He shall be learned in law and equity, of mature years, and of good repute for his sense of honor, impartiality, and justice.

His decision upon questions within his jurisdiction shall be final. He shall be appointed by the Samoan Government upon the certificate of his nomination as herein provided. He shall receive an annual salary of six thousand dollars (\$6000.00) in gold, or its equivalent, to be paid the first year in equal proportions by the three treaty powers, and afterwards out of the revenues of Samoa apportioned to the use of the Samoan Government, upon which his compensation shall be the first charge. . . .

Section 4. The supreme court shall have jurisdiction of all questions arising under the provisions of this general act, and the decision or order of the court thereon shall be conclusive upon all residents of Samoa. The court shall also have appellate jurisdiction over all municipal magistrates and officers.

Section 6. In case any question shall hereafter arise in Samoa respecting the rightful election or appointment of king or of any other chief claiming authority over the islands, or respecting the validity of the powers which the king or any chief may claim in the exercise of his office, such question shall not lead to war, but shall be presented for decision to the chief justice of Samoa, who shall decide it in writing, conformably to the provisions of this act and to the laws and customs of Samoa not in conflict therewith; and the signatory governments will accept and abide by such decision.

Section 7. In case any difference shall arise between either of the treaty powers and Samoa which they shall fail to adjust by mutual accord, such difference shall not be held cause for war, but shall be referred for adjustment on the principles of justice and equity to the chief justice of Samoa, who shall make his decision thereon in writing.

Section 9. Upon the organization of the supreme court there shall be transferred to its exclusive jurisdiction:—

(1) All civil suits concerning real property situated in Samoa, and all rights affecting the same.

(2) All civil suits of any kind between natives and foreigners or between foreigners of different nationalities.

(3) All crimes and offences committed by natives against foreigners or committed by such foreigners as are not subject to any consular jurisdiction. . . .

Section 10. The practice and procedure of common law, equity, and admiralty, as administered in the courts of England, may be — so far as applicable — the practice and procedure of this court; but the court may modify such practice and procedure from time to time as shall be required by local circumstances. The court shall have authority to impose, according to the crime, the punishment established therefor by the laws of the United States, of England, or of Germany, as the chief justice shall decide most appropriate; or, in the case of native Samoans and other natives of the South Sea Islands, according to the laws and customs of Samoa.

Section 11. Nothing in this article shall be so construed as to affect existing consular jurisdiction over all questions arising between masters and seamen of their respective national vessels. . . .

ARTICLE IV

A declaration respecting titles to land in Samoa and restraining the disposition thereof by natives, and providing for the investigation of claims thereto and for the registration of valid titles. . . .

Section 2. In order to adjust and settle all claims by aliens of titles to land, or any interest therein in the islands of Samoa, it is declared that a commission shall be appointed, to consist of three (3) impartial and competent persons, one to be named by each of the three treaty powers, to be assisted by an officer, to be styled natives' advocate, who shall be appointed by the chief executive of Samoa, with the approval of the chief justice of Samoa. . . .

ARTICLE V

A declaration respecting the municipal district of Apia, providing a local administration therefor, and defining the jurisdiction of the municipal magistrate. . . .

ARTICLE VI

A declaration respecting taxation and revenue in Samoa.

Section 1. The port of Apia shall be the port of entry for all dutiable goods arriving in the Samoan Islands; and all foreign goods, wares, and merchandise landed on the islands shall be there entered for examination. . . .

ARTICLE VII

A declaration respecting arms and ammunition and intoxicating liquors, restraining their sale and use. . . .

ARTICLE VIII

General dispositions.

Section 1. The provisions of this act shall continue in force until changed by consent of the three powers. Upon the request of either power after three years from the signature hereof, the powers shall consider by common accord what ameliorations, if any, may be introduced into the provisions of this general act. In the meantime, any special amendment may be adopted by the consent of the three powers, with the adherence of Samoa. . . .

The assent of Samoa to this general act shall be attested by a certificate thereof signed by the King and executed in triplicate, of which one copy shall be delivered to the consul of each of the signatory powers at Apia for immediate transmission to his Government. . . .

It will be observed that the first article of the act sets forth the recognition of the "independence of the Samoan Government and the free right of the natives to elect their chief or king and choose their form of government according to their own laws and customs." The act then proceeds to evolve a system of "autonomous government" for the patient Samoans as follows: First, the king is to be elected and supported by the natives (salary later fixed at \$1800 a year); then in the same clause it is recited that the powers will select the king. Next comes a chief justice to be appointed by the three powers jointly at a salary of \$6000; he is provided with a clerk and a marshal, whose compensation is to be derived from official fees. The jurisdiction of the Supreme Court, which is both original and appellate, covers all questions arising under the general act, and all questions concerning the powers of the king. This court hears differences between native Samoans, reviews the quarrels of foreigners, and exercises a right of appellate jurisdiction over all land titles and litigation arising therefrom. In addition to this and

to the police courts of the municipality of Apia, duly provided for, the consuls of the three nations represented in Samoa continued to maintain judicial functions according to the various laws of extraterritoriality.

The business of the islands is conducted at Apia, at which port the vessels that keep alive the trade of the nation arrive and depart, and it is there that the bulk of the revenues is collected. Accordingly a municipal council with a chairman or president is established. The president draws \$5000 a year. He is the chief executive of the district, and advises the king "in accordance with the provisions of the general act, and not to the prejudice of the rights of either of the three treaty powers." This council has upon its table the affairs of the municipal district of Apia, which in fact must virtually be the affairs of Samoa, as it collects the customs revenue as well as the taxes at the only point of export and import in the nation, and where the great majority of the tax-payers reside. The council appoints its own subordinate officers for the district. All its legislative acts, however, are inoperative and of no effect until approved by the consuls of the three treaty powers in Samoa.

A land commission is established for the examination of all claims and titles to real property, their holdings being subject to review by the Supreme Court.

The salaries of all these officials, none of whom, excepting the king, were likely to be native islanders, are to be paid the first year by the contracting powers, and thereafter from the native treasury.

Besides this corps of officials and their lists of rules and regulations, the act provides a system of revenue containing a schedule of export and import duties, and embracing a code of laws covering internal taxation.

On the face of the treaty it plainly appears that the government provided for Samoa by the three powers was a joint protectorate pure and simple, — that the words "autonomous government" contained in the paper were devoid of all meaning, while the act itself, in recognizing the "independence of the Samoan Government, and the free right of the natives to

elect their chief or king and choose their form of government according to their own laws and customs," was a farce. There is no word in the treaty that left to the king any actual power in his own realm. Every function of legislative or judicial government was to be performed by foreigners, who were appointed, and maintained if need be by the power of foreigners. The nation's revenues were to be collected, held and disbursed by the agents of the three contracting powers; and finally, the consular representatives of the three powers, whose sanction is necessary to every legislative act, manifestly controlled the nation's policy. An examination of the treaty therefore discloses the fact that instead of securing to the native Samoans an autonomous government, as it purported to do, it simply stationed a cordon of foreigners about the native king who should conduct the business of the nation in a manner not prejudicial to the interests of their home governments; and lastly it confirmed in the consuls their superior rights over all to control the destinies of the islands.

VIII

When the fury of the famous hurricane was spent, the war clouds that had hung low over Samoa for more than a year dispersed, and the islands were left distressed, but in peace. News of the efforts of the three powers at Berlin to solve the Samoan social problems had reached Apia, and all, natives and foreigners alike, remained expectant, — the latter no doubt vastly relieved. Tamasese's straw palace fell, and that disappointed monarch, bereft of German support, sulked in silence in his native village. The German and American flags were lowered, and the angry-worded proclamations were torn down to be burned and forgotten. Dr. Knappe, the Orlando Furioso of the islands, was replaced by the more astute Dr. Steubel. The once popular Malietoa Laupepa, released from political bondage, returned from his long exile in the Cameroons to find his power and prestige belonging to another, his old ally and kinsman, Mataafa. Mataafa had fought in the trenches, and had suffered and bled for the

cause of Samoa against the aggressions of the "invincible strangers." He was the hero of the wars, and richly deserved all honors. But when the Berlin treaty reached Samoa, it was Malietoa, to the amazement of the natives, who was recommended as sovereign. The two chiefs found themselves in a most embarrassing and aggravating attitude of rivalry. Probably no other candidates for royal honors in the world would have kept the peace under such circumstances. These two remarkable persons began a contest of civility, each pressing upon the other the acceptance of the crown. It was only by the extraordinary complaisance of Mataafa (a rare piece of good fortune for the foreigners who stood by the treaty) that Malietoa was at last accepted as king, and Mataafa, the Warwick, was content with the lesser dignity of vice-king.

The Samoans in due time gave their formal adherence to the treaty, and the foreigners in Apia celebrated the event. Chief Justice Cedarcranz (appointed by the King of Sweden) and Baron Senfft von Pilsach, the president of the municipal board, arrived, and took up the burden of their duties. The land commission set to work upon its seemingly endless task, and the wheels of the massive governmental machine were set in motion. For about one year all went well, or at least apparently so; but the seeds of dissatisfaction were in the soil and were maturing slowly. Now and then the natives betrayed rebellious symptoms, — the powers, they cried, recognize our independence and sovereignty, and accord us the right to elect our own king according to our own fashion, — a fair election would make Mataafa king; we, the majority, want Mataafa, why must we be saddled with Malietoa, who is not our choice? The Supreme Court entered upon the usual routine of judicial duties, issuing warrants and other writs, which were duly served upon the people according to civilized custom, but which were as duly misunderstood and disregarded by the natives. The tax gatherers under the foreign régime appeared on time to collect the governmental dues, but they entered empty houses.

The relation of the native kings to the official foreigners

was far from satisfactory. Malietoa's salary, out of which he paid all his own expenses, amounted, all told, to scarcely \$95 a month—a beggarly allowance for even a Samoan prince—while the monthly stipends of the chief justice, the president of the municipality, the chief of police and the private secretary of the chief justice were, respectively, \$500, \$415, \$140, and \$100 a month,—in all \$1155. The difference was too apparent. The natives had so often tasted the bitter fruits of deceit in their dealings with foreigners, that suspicion quite naturally stole into their minds that they were again being duped. The treaty in one sentence accorded them rights which in the next sentence it took away. The government was almost entirely an alien one which they, the natives, were obliged to maintain upon a scale of generous salaries. They realized that their own king, the only native officer, was a mere figurehead. As an additional cause of grievance they were being taxed to support a government not of their own creation, and were being promptly prosecuted by the courts if they failed to pay. It also appeared that the land commission was confirming too many dubious titles in the German, English, and American traders to seem entirely just to the Samoans—surely, they were being plucked.

While Malietoa was nominally king, all the pomp and ceremony of that Gilbertian office, as well as the management of the few affairs left to the native government, fell to the share of Mataafa. The latter having the stronger personality of the two, and being all the time conscious of the moral support of the people, regarded the venerable Malietoa as “his poor brother,” and maintained toward his superior an attitude of friendly and good-humored contempt. On May 31, 1891, Mataafa departed from the company of his colleague and took up his abode at Malie, a town some miles to the west of Apia, where he continued to live in royal manner attended by retainers and entertained by the visiting delegations of chieftains from all parts of the kingdom. To the apprehensive foreigners of Apia the departure of Mataafa from his post of duty by the side of Malietoa at

Mulinuu was no less than a signal for a revolutionary outbreak. The government officials trooped *en masse* to Malie, to persuade the disaffected monarch to return; and though they plied him with argument, he politely, but none the less firmly, declined to resume his former status of vice-king. In Apia preparations were again made for war; but to the forbearance of Mataafa himself, be it said, peace was maintained,—this, too, in spite of the fact that the government declared Mataafa a rebel, and his estates confiscated.

The position of the latter at Malie was an anomalous one. While enjoying the outward signs of royalty, and to all intents and purposes exercising the offices of a ruler over the native peoples, he conducted himself, nevertheless, in a manner wholly consistent with the scheme of government established by the powers. He recognized Malietoa as king, obliged his followers to pay their proper dues into the legitimate treasury, and he sent his subjects, when arrested for any cause, to the Apia courts for trial. Still his attitude was an ominous one, and a nervous apprehension rested over Apia, lest at some unexpected moment the rebel forces would sweep into the city. That such an occurrence did not take place surprised every one.

As might very naturally be expected, such unsatisfactory relations between the two rulers could not long continue. Malietoa became jealous and threatening; Mataafa gradually became offensive. On December 6, 1892, United States Vice-Consul Blacklock, reporting upon the condition of affairs in the islands, wrote:—

Ever since Mataafa's establishment at Malie he has endeavored to gather strength, and there is not the slightest doubt had he been successful in getting sufficient following, he would have made war upon Malietoa. He has done everything in opposing the Government except making war; he has defied its courts, obstructed its officials in the execution of their duties, harbored refugees from justice, succored and supported prisoners escaped from prison, and at the present moment is living in open defiance of the King and Government and all the laws of the country, keeping up an armed force and plundering foreigners' plantations for subsistence. Time and again have white officials, who went

to Malie with warrants for the arrest of offenders, been driven away by Mataafa's soldiers, and warned against attempting any arrest under penalty of death.

The expediency of sending war vessels to Apia to assist the government in enforcing its decrees became a subject of correspondence in Washington, for the situation in the islands changing from bad to worse, the question had arisen as to the advisability of taking active measures to disarm Mataafa. June 19, 1893, Mr. Gresham wrote to Sir Julian Pauncefote : —

The Government of the United States, while heretofore inclined to confine its action to participation in the maintenance of the system of government devised by the General Act to the execution of the process of the supreme court and to keeping up such naval representation in Samoan waters as should suffice for the protection of American life and property in those islands, is now prepared to go further, in view of the reported rebellious attitude of Mataafa and his followers, and will join in an active demonstration for the purpose of surrounding and disarming them.

Sir Julian in reply, a few days later, reported that "Her Majesty's Government will heartily cooperate with the other two treaty powers in the manner and for the purposes mentioned."

Accordingly, with the ready consent of Germany, another man-of-war episode took place in Samoa (July 18, 1893). Before the arrival of the U. S. S. *Philadelphia*, which had been hastily despatched to the islands to assist in the demonstration, Mataafa surrendered to the combined German and English forces and was deported, as had formerly been Malietoa, to the Marshall Islands, where, with a number of chiefs who bore him company, he was maintained in exile at the joint expense of the three powers.

With the powerful Mataafa out of the way, and Malietoa consequently strengthened in his position as king, the government should have prospered. In the early part of 1894, an uprising of Tamaseseites disturbed the repose of the king, but the three consuls, and king Malietoa stood together

through the crisis. The revolution, after a series of skirmishes, and a vast deal of parleying, came to a close in September. This revolt was led by young Tamasese, the son of the former king, and a new candidate for royal honors. Its object was the overthrow of Malietoa: because "he has done much evil"; because "it is now more than twenty years since he has become king and he has done nothing for these islands"; and because "Samoa is completely drained by the payment of taxes." The latter reason was perhaps the urgent one, for according to most reliable authorities, any tax at all is too much for the Samoan natives. This rebellion was suppressed with a severity which called from Robert Louis Stevenson, then residing at Vailima, the bitterest reproaches upon the three powers. Still another of those distressing man-of-war episodes took place, in which native villages were shelled and defenceless women and children killed. The ferocity of white men seems at times to be little less than that of more primitive people.

IX

After a period of a few years the "autonomous government" of Samoa, as provided by the Berlin treaty, was found to be a failure. At first the evident friction between parts of the governmental machine had been charitably overlooked, as the result of newness, and it was hoped, when once the pace was set, the system would prove satisfactory. As time progressed, all who were in a position to know became convinced that the scheme adopted for the islands was not only ineffective but actually pernicious. The discord which seemed inevitable among the various heads of that triple dominion soon became manifest. The authority of the chief justice and that of the president of the municipality came into more or less conflict. The land commission toiled faithfully, but with exasperating interruptions, while its decrees bred dissensions as they displeased this or that faction in Apia. The three consuls and the numerous officials of different nationalities interpreted the provisions of the

Berlin Act as best suited their own or their country's political and commercial interests. It is not surprising, therefore, that the old racial enmities cropped out anew. It became apparent, even to its most radical supporters, that the treaty government could never fulfil expectations. The natives soon came to ignore the authorities. The process of the Supreme Court was seldom served, and when served, it was of little avail. The influence of King Malietoa gradually declined, until the last vestige of his power as native ruler of Samoa left him king in name only. The government had no authority whatever outside the settlement of Apia, and even within the little municipality itself, its impotent character, combined with its cumbersome structure, made it seem like the creation of a comic opera. The testimony of travellers, the reports of consuls, and the dismal complaints of the natives operated in a very short time to prejudice the administration in Washington against the maintenance of the Berlin Act.

At one of the sessions of the conference in Berlin (1889), Count Bismarck had said, with full approval of the other plenipotentiaries, that the arrangements would "be limited to a period of three or five years, to put them to the test." The act also provided for amendment (Art. 8, Sec. 1) after three years from date of signature — "the powers shall consider, by common accord, what ameliorations, if any, may be introduced into the provisions." Taking advantage of these provisions, meetings presided over by Robert Louis Stevenson were held in Apia in 1892, to adopt proposals for certain desirable changes in the act. These proposals were forwarded to the three signatory powers, with the expressed hope that "they, the powers, might be willing to consider the opinion of persons on the spot, and intimately acquainted with the interests involved." The American Consul, Mr. Sewall, also represented to the government in Washington the pressing need of that "revision of the Berlin Act" which was contemplated when it was originally executed. The United States Government alone appears to have been moved by the Stevenson memorial, for it, at least, made some effort

to bring about a convention for reconsideration of the act. Both Germany and Great Britain declined to entertain the proposition, and the unsatisfactory governmental system, as originally adopted at Berlin, continued to exist, to the distress of the natives, and to the annoyance of all concerned.

Referring to the many troubles of Samoa since the Berlin Act had gone into force, President Cleveland said in 1893, "This incident, and the events leading up to it [American interposition in Samoa], signally illustrate the impolicy of entangling alliances with foreign powers."

The next year President Cleveland repeated his views upon the subject : —

The present government has utterly failed to correct, if indeed it has not aggravated, the very evils it was intended to prevent. It has not stimulated our commerce with the islands. Our participation in its establishment against the wishes of the natives was in plain defiance of the conservative teachings and warnings of the wise and patriotic men who laid the foundations of our free institutions, and I invite an expression of the judgment of Congress on the propriety of steps being taken by this Government looking to the withdrawal from its engagements with the other powers on some reasonable terms not prejudicial to any of our existing rights.

In December, 1895, the President was moved once more to touch upon the Samoan matter in his third annual message to Congress : —

In my last two annual messages I called the attention of the Congress to the position we occupied as one of the parties to a treaty or agreement by which we became jointly bound with England and Germany to so interfere with the government and control of Samoa as in effect to assume the management of its affairs. On the 9th of May, 1894, I transmitted to the Senate a special message . . . and emphasizing the opinion I have at all times entertained, that our situation in this matter was inconsistent with the mission and traditions of our government, in violation of the principles we profess, and in all its phases mischievous and vexatious. I again press this subject upon the attention of the Congress, and ask for such legislative action or expression as will lead the way to our relief from obligation both irksome and unnatural.

Notwithstanding the dissatisfaction felt in Samoa and in the capitals of all three of the contracting powers (especially in Washington, where more conservative ideas of foreign relations existed than in either London or Berlin), no further attempt was ever made to alter the Berlin Act. The Samoans continued to complain; the foreigners in the islands controlled their jealousies as best they could, and all waited and hoped for some change. Relief came suddenly and in a most unexpected manner.

In 1898 news of the death of one of the chiefs who had accompanied Mataafa in his exile to the Marshall Islands distressed the Samoan natives. A large majority were dissatisfied with the rule of Malietoa Laupepa, as they had condemned the manner in which that monarch had been thrust upon them. They had never ceased to hope that justice would yet be done their favorite chieftain, the great Mataafa. The fear lest he, too, might succumb to the unhealthy climate of the Marshalls, and suffer the disgrace of dying in exile, brought about a persistent clamor for his pardon, and for his restoration to his own people. Even Laupepa, his rival, joined in the petition to the powers for the pardon and return of Mataafa. The old hero was released, and he soon after reappeared in his native province, amid the rejoicings of his devoted followers. He was under strict promise to keep the peace, and to respect the rights of King Malietoa Laupepa—there should be no more revolutions.

Mataafa had scarcely arrived in Samoa when King Malietoa Laupepa died. This was in August, 1898. According to Samoan customs, there is no direct succession to the crown, nor can the king appoint his successor. The manner of selecting a ruler is peculiar. Only those belonging to certain clans or families are eligible; and of these, the one who has had bestowed upon him, by the people of his own or of other provinces, a certain number of honorific titles, is accepted as monarch over all. It usually happens that the bestowal of honors is carried to an unwarrantable degree during an election period, and numberless disputes arise between claimants as to the authority of a tribe to grant titles, and

the rights of the recipients to receive them. Thus the last step in a Samoan election, according to native custom, is a war of succession.

With the throne left vacant by Laupepa's death, three candidates for royal honors at once presented themselves: Mataafa, the veteran, fresh from his enforced retirement; Malietoa Tanu, a young boy, son of the dead king; and Tamasese, who, it will be recalled, had been created, by the Germans, king of Samoa in opposition to Malietoa Laupepa, in 1888. Each aspirant was of royal blood — *i.e.* belonged to families who were eligible to the kingship, and had, therefore, substantial claims for the honor of succeeding Laupepa. Tamasese had a comparatively small following of several hundred men. Tanu was popular in Apia, and was supported by many foreigners, especially by the Americans and English, and supposedly by the Protestant missionaries; Mataafa had practically the solid backing of all native Samoa. He was the popular idol. Delegations of natives from all parts of the island rallied to his support. Thousands of his adherents came to Apia in the hope of witnessing the triumph of their favorite chief, and to assist in the ceremonies of his anointment as king. The result of the native election (November 14, 1898) was in favor of Mataafa, both Tanu and Tamasese showing a pitiful weakness in face of the overwhelming strength of the Mataafa party. Tamasese had been induced at the last moment to withdraw in favor of Tanu. The latter, despite the inequality of the contest, and no doubt influenced by his foreign friends and supporters, decided to contest the election with Mataafa. He maintained that Mataafa was not eligible to the office, owing to the fact that he had suffered exile, and that he had returned to Samoa only with the express understanding that he should never seek to gratify his royal ambitions.

The sixth section of the third article of the Berlin Act provides that: —

In case any question shall hereafter arise in Samoa respecting the rightful election or appointment of King or of any other chief claiming authority over the islands . . . such question shall not

lead to war, but shall be presented for decision to the chief justice of Samoa, who shall decide it in writing, conformably to the provisions of this Act and to the laws and customs of Samoa not in conflict therewith; . . .

The choosing of a king, therefore, fell at last to the Supreme Court, according to the stipulations of the tripartite Berlin Act; but the selection of a ruler from the candidates was, nevertheless, to be made by the court in strict accordance with the laws and customs of Samoa. William L. Chambers, an American, was chief justice, under authority of the three signatory powers, and upon him, therefore, fell the responsibilities of the occasion. An excited popular interest, both native and foreign, became inflamed during the period of the trial. The Teutonic element in Apia warmly espoused the cause of Mataafa, and his case was vigorously conducted in court by Herr von Bulow, a German lawyer well versed in Samoan traditions.

The American and English residents suspected that the lively German interest in Mataafa's success was owing to some secret understanding with that chief by which, in the event of his election as king of Samoa, he was to submit himself to the will of the German Government, and even aid in securing for it the ultimate control of the islands. Indeed, at that very time, rumors were rife in Apia that Germany contemplated a decisive movement toward that end. The usual jealousies and racial antipathies in Apia were therefore greatly stimulated. The Germans did not conceal their desire ultimately to win Samoa for themselves; but for the present they had no hesitancy in asserting that Mataafa had been rightfully and properly elected king, and that they supported him solely through a sense of justice. Mataafa, it will be remembered, was the former arch enemy of the Germans. He was in command of those forces which, in the political disturbances of 1887-88, had ambushed and killed some fifty German marines from the *Adler*. This act had called down upon him the denunciations of the German Government, and had left him barred from ruling over Samoa by a protocol of the Berlin Act, — a condition insisted upon, as already stated,

by Count Bismarck before the signing of that instrument. The attitude of the Germans in suddenly befriending their former enemy in Samoa served all the more to arouse American and English suspicion in their motives.

It was upon the operation of this protocol that the Tanu party based its claims in court;—but thereupon Herr Rose, the German Consul-General, came forward and officially withdrew his government's objection to Mataafa upon that score. Seemingly, then, Tanu was left without ground to stand upon. The eligibility of Mataafa having been acknowledged by the Germans,—the only party who might rationally object to his choice,—and his eligibility having been accepted by Judge Chambers in writing, the result of the judicial investigation seemed to be fully assured in Mataafa's favor. Pending the trial, an agreement was signed by the representatives of Tanu, binding themselves and their clients to abide by the decision of the chief justice. Mataafa, firmly convinced of his rights, refused to enter upon such an agreement.

“After a trial of eleven days of patient investigation,” wrote Judge Chambers afterward to his brother in New York, “two sessions each day and a hard study every night of Samoan genealogies, customs, titles, and practices, I came to the conclusion, from a legal and conscientious point of view, besides upon the treaty and the laws and customs of Samoa not in conflict therewith, that Tanu, the son of the late King Malietoa, and who, by the gift of the people, had been endowed with the name of Malietoa, was the duly elected king.” By the same decision Tamasese was created vice-king.

Judge Chambers' decision was based, first, upon the protocol, which, he held, for all time barred Mataafa, and therefore left no other candidate in the field but the young Tanu; and, secondly, upon the fact that upon young Tanu only had been conferred, by the natives, the requisite number of honorific titles which, according to their custom, would entitle him to the kingship. The indignation of the Germans, and of the majority of natives, was very great when the result of the trial was proclaimed; indeed, when the opinion was first read, December 31, 1898, a riot was only averted by

an armed force of marines landed from an English man-of-war,—a demonstration in which the justice was himself fully prepared to join.

The decision was at once accepted by the English and American consuls-general, Messrs. Maxse and Osborn, but was indignantly scorned by the German Consul, Herr Rose. With the Germans solidly opposed to the ruling of the court, and in open and avowed sympathy with the defeated party, Mataafa was encouraged to resist this decree of the court. Conditions were favorable for a revolt. A German vessel was in the harbor, and Mataafa's warriors were restless and hard to restrain; for weeks they had been preparing to defend the cause of their chief, and the moment was now at hand. It was a period of intense excitement, and the Mataafans felt that their leader had been greatly wronged. For one day only was there hesitancy and suspense, and then the Mataafa forces broke from their camp at Mulinuu and swept into Apia, headed, as the Americans alleged, by German officers, one detachment of the "rebels" actually being led by the president of the municipality, Herr Johanness Raffel. The Tanu supporters could not withstand the "rebel" assault; they fled in every direction, many taking refuge upon the British gunboats at anchor in the harbor, while the chief justice was himself obliged to seek safety in flight. Mataafa was at once in control, and, with some pomp, crowned himself king.

In the midst of this confusion, the three consuls succeeded in effecting a truce (January 5, 1899), by the unanimous acceptance of the Mataafa Government as the "Provisional government of Samoa," which it was expected would at least keep the peace until a way out of the difficulties could be decided upon. The text of this consular agreement took the form of the following proclamation:—

Owing to the events of the last few days and to the urgent necessity of establishing a strong provisional government for Samoa, we, the undersigned consular representatives of the three treaty powers, declare as follows:—

1. The Mataafa party, represented by the High Chief Mataafa

and the following thirteen chiefs . . . who lately acted in behalf of said party, and who are now in *de facto* possession of the government, are recognized to be the provisional government of Samoa, pending instructions from the three powers.

2. The President [of the Municipality] to be the Executive of the said Provisional Government.

3. Nothing in this proclamation shall be taken as modifying or abrogating the rights of the three treaty powers in Samoa, either individually or collectively, or of their Consular representatives as now existing.

Given at Apia this 4th day of January, 1889.

ROSE,

Imp. Gov. Consul Gen.

L. W. OSBORN,

U. S. Con. Gen.

ERNEST G. B. MAXSE,

H. B. M. Consul.

So far as the affairs of Apia were concerned, the president of the municipality, Herr Raffel, was thereby placed in control as the executive officer of the provisional government.

This action was a decided victory for the German Consul, Herr Rose, as it gave the color of virtue to the revolution against the legally chosen Tanu. With Herr Raffel in control, and with the sympathy of nearly all Samoa behind them, the Germans in Apia were in a position to bring about peace with the probable acceptance of King Mataafa by the powers. To accomplish these ends, moderation and a very keen appreciation of what was fitting and proper to do under the circumstances were necessary. However, both Herr Raffel and Consul Rose, being men of uncertain temper and somewhat wanting in tact, permitted their better judgment to be so far overcome by the excitements of the moment that the very next day after the proclamation they seized the courthouse, barred the doors, and issued a notice that the Supreme Court had adjourned until further notice from the provisional government. In reply to this startling notice, Captain Sturdee, of the English man-of-war, *Porpoise*, upon which the chief justice had taken refuge, issued a statement to the effect that the Supreme Court having been "illegally

closed by the provisional government, and the orders of the chief justice posted at the courthouse torn down by armed troops of the government, the chief justice, supported by the United States Consul General and Her British Majesty's Consul, under the protection of the armed forces of the *Porpoise*, will hold a court to-day at noon. If resistance is met, which it is hoped will not be the case, fire will be opened to support the rights of these two great powers."

Thereupon Herr Raffel, no doubt recalling the words of Louis XIV, declared himself *to be* the Supreme Court, and encouraged by the German Consul, he took formal possession of the building in the name of the provisional government. According to his threat, Captain Sturdee sent ashore his marines, who accompanied Mr. Chambers to the courthouse and assisted him in taking forcible possession of the premises. In this attempt to oust the Germans, personal encounters between high officials took place, and Mr. Chambers resumed his seat amid the mingled cheers and jeers of the divided spectators. An indignant German resident violated the sanctity of the courthouse by wilfully smashing its windows, whereupon Justice Chambers ordered him to be arrested, fined and committed to jail. Herr Raffel thereupon released his compatriot, and the German Consul protested against the action of the American judge in fining a German subject. The American and English consuls returned sharp answers to Herr Rose, and thereafter even the semblance of peaceful relations ceased between the rival factions. As among the natives themselves, war between the whites in Apia was virtually declared, and the marines from the English and German gunboats in the harbor were quite ready to respond to any call. In the meantime, Mataafa with a force of several thousand warriors held Mulinuu, the royal seat, and bade defiance to all who should seek to dislodge him. In Apia a reign of terror was inaugurated; throughout the island a season of riot and pillage began.

When tidings of this new Samoan upheaval reached the outer world, the three treaty powers seemed at a loss to know just how to act. The occasion was an auspicious one for the

American press to open an assault upon Germany. Criticism of Germany was at that moment acceptable to all parties, as the Admiral Diedrich episode at Manila Bay was still fresh in mind. The history of German intrigue in Samoa was fully reviewed in highly colored accounts, and the story of the lively careers of consuls Steubel and Knappe were glowingly rehearsed to demonstrate Germany's hostile attitude toward the United States. In these proceedings was found another link in that chain of evidence which proved the enmity of Germany. The German Government, it was insisted, should be called upon to answer for a gross violation of the Berlin Act. That Consul Rose and President Raffel were wholly in the wrong there could be no doubt, for had they not refused to accept the final decision of the Supreme Court, in violation of treaty regulations; had they not furthermore encouraged the defeated party into open revolt against the law of the land; had they not seized the courthouse, broken the jail, and were they not to be charged with having instituted a reign of anarchy? The valor of the Americans and English in upholding the decision of the chief justice against great odds was highly commended, and a desire was generally manifested for a warship to be sent at once to the scene.

The German side of the case was simply that the decision of Chief Justice Chambers was biassed, and decidedly unjust; indeed, it was so outrageous it could not be tolerated. In justification of their conduct the Germans insisted that they had only sought to prevent the imposition of a weakling upon the people who was not the choice of the Samoans, and whose succession to the throne would inevitably lead to war. They charged the missionary party with complicity (Mataafa being a Catholic), and Justice Chambers with corruption. If they had exceeded the bounds of propriety in their methods to relieve the situation in Apia, it was because of their zeal to right a wrong as quickly as possible.

Much anxiety was nevertheless felt upon all sides lest the signatory powers would seek to uphold the acts of their agents in Samoa, and thus expand the disturbances in the

islands into an international quarrel. Obviously the course of wisdom lay in disregarding the recent happenings in Apia, and proceeding at once to a review of Justice Chambers' decision.

Germany first relieved the tension by a disavowal of the course which had been followed by her consul-general in Apia, and by the bestowal of a reprimand upon Herr Raffel, which caused that indignant official to resign his position. The Parliamentary Secretary for Foreign Affairs announced that England was awaiting further information before recognizing Mataafa as king of Samoa. This evidence of a conciliatory policy on the part of Great Britain further eased the situation.

The first move of the United States after a hasty diplomatic parley in Washington between Secretary Hay and the representatives of Great Britain and Germany (where assurances were given that the matters would be peaceably settled) was to despatch a war vessel with a commander of high rank to the scene. Accordingly the U. S. S. *Philadelphia*, Admiral Kautz in command, was immediately ordered to Samoa, arriving at Apia on the 9th of March, 1899. The admiral was instructed to enforce order, but to take no decided steps in upholding either party without urgent necessity.

The situation that Admiral Kautz discovered upon his arrival in Apia was a troublesome one with which to deal. An official deadlock existed. Mataafa warriors were active, and desultory fighting continued in all the islands. The admiral, as senior naval officer in the harbor, called a meeting of the three consuls and of the naval commanders then in port. A two days' conference was held, as a result of which Admiral Kautz issued a proclamation on March 11, setting forth that "it is agreed that the so-called provisional government, under the High Chief Mataafa and thirteen other chiefs can have no legal status under the Berlin treaty, and can therefore not be recognized by the consular and naval representatives." The proclamation ordered Mataafa and his warriors to disperse quietly to their homes; it also upheld

the decree of Chief Justice Chambers, and ordered that the chiefs of the Tanu party, who had been deported to other islands, should be returned to their own homes; it ordered that the decrees of the court should be respected, and ended in a threat that unless these things should be done, military force would be employed to carry out the purposes of the instrument.

Admiral Kautz, no doubt, assumed that a majority vote of the consuls was sufficient to authorize any such proceeding — an opinion which was not shared by the German Consul. The latter held that unanimity of consular agreement was required to order the dissolution of the provisional government. Two days later he met the admiral's proclamation by a counter-proclamation which gave —

NOTICE TO ALL SAMOANS: By the proclamation of the Admiral of the United States, dated March 11, it was made known that the three Consuls of the signatory powers of the Berlin treaty, as well as the three commanders of men-of-war, had been unanimous in deciding to recognize no more the provisional government composed of Mataafa and thirteen chiefs.

I, therefore, make known to you that this proclamation is quite false. I, the German Consul General, continue to recognize the provisional government of Samoa until I have received contrary instructions from my government.

ROSE, *German Consul General.*

Apia, March 13, 1899.

Instead of dispersing, as ordered by Admiral Kautz, the Mataafa party became more aggressively defiant and bold. They occupied and fortified positions within the neutral area of the municipality. More Tanu supporters were captured and deported to other islands. The triumph of Mataafa seemed to be complete when Admiral Kautz interfered by force of arms. His ultimatum to the rebellious chieftain to cease hostilities carried with it the threat of a bombardment to begin at one o'clock, March 15. When that moment arrived, the Mataafans refused to yield their positions in Apia, and the shelling process began. American and English marines were landed, and fought side by

side, the Germans taking no part. The war was carried on in all the islands. The *Philadelphia*, and the English vessels, *Porpoise* and *Royalist*, began a systematic bombardment of the coast villages which were known to be in sympathy with Mataafa. This method of warfare upon the defenceless natives, the women and children of the villages along the coast, had been roundly denounced by Captain Leary when the Germans had adopted the same tactics against Laupepa and Mataafa in 1888; and it is difficult to find justification for it at any time, whatever may be the provocation. To fire upon non-combatants is not only opposed to all rules of civilized warfare, but in these particular cases it would seem to be the refinement of inhumanity. The worst offence of the natives was the desire to elect a king according to their own custom,—a privilege accorded them in the treaty, and for some mysterious reason denied them. In one encounter (April 1), a squad of American and English sailors, led by several officers from the *Philadelphia*, were surprised by Mataafans, and a number killed and decapitated, including two American officers.

Mataafa was, however, soon obliged to retire from Mulinuu, and Tanu was thereupon crowned king (March 23) in the presence of some natives and the American and English officials. Mataafa continued in open rebellion, with headquarters in the bush, and a number of engagements of more or less importance ensued. During the latter part of April news reached Apia of the appointment by the three signatory powers of an investigating commission. Only then was a truce declared. Both parties rested upon their arms, and in a sullenly expectant mood the opposing foreign factions in Apia consented to await the coming of the commission.

As soon as it was possible, the diplomacy of the three interested nations was brought to bear upon the situation. Fortunately all three powers assumed an unexpectedly complaisant attitude, and in that quarter where calmness and forbearance were least expected they were most readily forthcoming. In a speech before the Reichstag, on the 14th of April, Herr von Bulow declared that it "would be simply

criminal to let loose war between three great and civilized nations" because of such a quarrel. From Germany, the traditional offender in Samoa, came a proposition for a Joint High Commission, representing the three powers, to proceed at once to the scene of disturbance. The proposed commission should restore order in the islands, ascertain the causes of the present trouble, and report to their home government its recommendations for future legislation.

No more promising method of a settlement could be devised. The United States and Great Britain at once accepted the proposition from Berlin, and general satisfaction was felt when the State Department announced the appointment of such a commission. The personnel of the commission inspired confidence, and the fact that the German and English members were selected by their respective governments from among the diplomats residing in Washington, and who were presumably in touch with American opinion on the subject, gave further promise of a satisfactory conclusion. The commission departed from San Francisco April 25, on the U. S. S. *Badger*, arriving in Apia on May 13.

The three commissioners were,—for the United States, Judge Bartlett Tripp, of South Dakota (elected Chairman); for Great Britain, Sir Charles Eliot, Second Secretary of the British Embassy at Washington; and for Germany, Baron Speck von Sternberg, First Secretary of the German Embassy in Washington.

The commission carried full authority to establish a provisional government in Samoa, and to enforce order. All officials under the Berlin treaty, or those representing their governments in Apia, were instructed to surrender their authority to the commission. Thus by acquiring full jurisdiction over the islands, the commission would not be hampered in the fulfilment of the more important duties with which it was charged. These duties were a careful inquiry into the social and political condition of the islands; an examination of rival claims to the throne, and a review of the chief justice's decision. The commission was further

charged to make investigation into the causes that led to the recent riots and disturbances, as well as to the bombardments that followed on the part of the American and English war vessels, and to the various arrests and acts of violence which had taken place. Finally, the commission was instructed to "consider the provisions which might be necessary for the future government of the islands or for the modification of the final act of Berlin," and report accordingly.

On their arrival, the commissioners found a condition of nervous excitement existing in Apia. Mataafan forces surrounded the municipality; native and white soldiers patrolled the streets of the town, six men-of-war lay at anchor in the harbor, and all business was suspended. Their reception by the usually demonstrative natives, as well as by the whites, was unexpectedly cold. This lack of cordiality was owing to the fact that the natives distrusted the competency or ability of a committee wholly ignorant of Samoan customs to satisfactorily adjust their difficulties. The commission lost no time in entering upon its double task. The first step was to disarm the natives, which was successfully accomplished within two weeks by promises of restoration of the arms or their equivalent in money after peace had been secured. After a series of meetings with the residents, native and foreign, the commission reached the conclusion that the decision of the chief justice was valid. "The decision declaring Tanu to be king was the law of Samoa, and all who refused obedience to it violated not the decision alone, but the treaty upon which it was based" wrote Mr. Tripp. Hence, a vindication of Admiral Kautz.

The provisional government of Mataafa and Herr Raffel which had been inaugurated by the three consuls in January, having ceased to exist, the commission declared Tanu to be king; but that young man, already wearied of the uncertain glories of political life, and being, moreover, ambitious to adopt the career of a missionary, promptly abdicated! Then arose the question as to the advisability of abolishing the kingship. The various islands were canvassed, and many

meetings held with chiefs in various parts of the group, which resulted in a discovery that the larger sentiment of natives and foreigners favored the plan of the commission to do away entirely with that office. In the wisdom of this reform both Tanu and Mataafa agreed, the latter chief no doubt concluding to abandon his struggle against what now seemed to him to be the decrees of fate. Another provisional government was thereupon established consisting of the three consuls, with the president of the municipality, Dr. Solf (Herr Raffel had resigned), as adviser. Pledges of peace between the rival native factions were secured, and harmony reigned when the commission departed upon the homeward journey, July 18. Mr. Chambers left the islands, Mr. Osborn was designated Chief Justice, and Dr. Solf remained president of the municipal council. There was no king.

Before leaving the islands the commissioners reached an agreement recommending a new form of government for Samoa. Their conclusions were embodied in a preliminary draft of treaty before the three powers for the amendment or the modification of the Berlin Act. Accompanying the draft of treaty was a joint report explanatory of the proposed reforms.

The conclusions of the commissioners had been arrived at in a logical manner. First, the ills of Samoa and the evils which caused them were investigated and classified, and then to each category of evils were proposed such remedies as seemed to the commission best calculated to remove or at least to minimize them. These "evils" were grouped under four heads.

1. Those evils which appear inevitably to attend the election of a king in Samoa, and his subsequent efforts to exert his authority.

2. Those evils due to the rivalry of foreign nationalities and to the disposition of the whites to take sides in native politics.

3. A class of evils having origin in the fact that there is no law or government in the islands outside of Apia other than native customs.

4. The evils arising from the insufficient enforcement of the customs regulations allowing the distribution of arms among the natives.

To offset these four prime causes of dissension in Samoa, the joint report proposed, — first, the abolition of the kingship. That, it was believed, could be effected without even the regrets of the natives. The office was a “comparatively modern institution,” of which it was “impossible to say any good whatever.” In place of the kingship a “system of native government analogous to that which works successfully in Fiji” was proposed. This system of native government contemplated a division of the islands into administrative districts, corresponding to those recognized by Samoan usage, and over each of which a native chief would preside. These chiefs were to meet annually in council; native courts would be established with jurisdiction over minor crimes, and in accordance with native laws and customs.

The second class of evils which found origin in the jealousies of the foreign factions in Apia were recognized to be the most difficult of all to meet. Hostility among the foreigners “permeates all departments of life.” “The traders on the one side combined against those on the other. . . . The municipal council is divided.” Reforms were declared never to be judged upon their merit, but always “by party considerations,”—all officers were found to be partisans. As a cure for these evils three measures were proposed: (*a*) the appointment of an administrator to be chosen by a neutral power, and who should possess a large measure of authority; (*b*) the appointment of three delegates by the signatory powers to assist the administrator and also to exercise such consular powers as may become necessary. They, together with the administrator, form a “legislative council”; (*c*) the abolition of consular jurisdiction and the consequent abandonment of extraterritoriality, there being no real need of three separate judicial systems in the island. “Hitherto consular jurisdiction has been a powerful means of embittering internal strife in Apia. Each nationality has its own law, and the consul who administers that

law was popularly regarded not as an impartial judge but as the protector of his own nationality. We believe that by abolishing this outward sign of separate internal institutions, and by submitting all nationalities to one court and one law, a great advance will be made in the direction of removing petty rivalries and jealousies, and restoring good relations between the various white colonies."

To meet the third class of evils — the lawlessness prevailing outside the municipality of Apia — the joint report proposed the enlargement of the jurisdiction of the chief justice over all the islands, so as to include all cases between natives and foreigners.

The strict enforcement of customs regulations according to law it was believed would remedy the evils of the fourth class, and such reform was therefore urged.

In brief, the recommendations of the commission for the alteration of the Berlin Act were for the abolition of the kingship and of consular jurisdiction, the extension of the jurisdiction of the Supreme Court and the establishment of native courts, the creation of a neutral administrator of large authority and the appointment of a tripartite council which should act as a legislative council, each councillor being charged at the same time with consular duties.

These recommendations were made as offering the best possible solution of the difficulties so long as the three interested nations should continue to maintain their positions in Samoa, but the commissioners frankly admitted that no wholly satisfactory arrangement could be made while the triple-dominion continued.

We do not think it will ever be possible to do away with this state of things under a tripartite administration, and we take this opportunity of recording our opinion that the only natural and normal plan of government for these islands, and the only system which can assure permanent prosperity and tranquillity, is a government by one power. We regard it, however, as beyond our province to make any but a general statement on such a subject, and we have endeavored to amend existing arrangements in such a manner, that they may prove, if not entirely satisfactory, at least workable.

The action of the Joint High Commission was generally approved in the United States. Those who had followed the course of Samoan history found in the proposed abolition of the kingship the removal of the chief cause of dissension in the islands. Most of the quarrels in Apia had no doubt originated in the more or less open attempts of one or another foreign faction to create a puppet king, who would do the bidding of his masters. With this source of dissension removed, the rival factions would have far less cause of disagreement.

In October, 1899, negotiations were begun in Washington for a joint consideration of the proposals made by the commission, and for the amendment or alteration of the Berlin Act. In Samoa, the probable partition of the group had for some time been hinted at, the current opinion being that Germany would insist upon the retention of Upolu, and that Great Britain would take the larger but less important island of Savaii. Neither Great Britain nor the United States seems to have contemplated such action at this particular moment, nor to have considered the possibility at that time of abrogating *in toto* the Berlin Act. From Germany again came the rational proposition of the hour. All three powers had been impressed by the assertion of the Joint Commission that "the only system of government that can assure permanent prosperity and tranquillity is a government of one power"; but the difficulty lay in making a satisfactory arrangement to that end. Indeed a division of the islands among the three powers appeared to both England and the United States a hopeless accomplishment, however desirable such a solution of the difficulties might be. The rival interests of Germany and Great Britain in the Pacific seemed to preclude any such action — at least upon a thoroughly friendly basis. However, the German foreign office insisted that the time for partition had come, and upon no other basis could the Samoan difficulty be adjusted. Ultimate apportionment of the islands was inevitable, and no time, it maintained, could be more appropriate than the present for such action. The tripartite government

had proved a failure and a source of danger in the past ; it would likely be the same in the future, were it permitted to exist.

In a scheme of partition the interests of the United States clearly entitled her to the retention of Tutuila and its valuable harbor of Pago-Pago, and perhaps to no more ; but the interests of Germany and Great Britain in the Pacific were far more complex ; neither power could well retire from Apia. In the first attempts to reach a conclusion in the matter of partition of the islands, it became very apparent that the group was, after all, too small for a satisfactory division, and the question soon narrowed itself down to whether Great Britain or Germany should retire from Samoa, in consideration of benefits to be granted, and leave the other in sole possession. The extent of land owned in Samoa by the Germans greatly exceeded the holdings of other nationalities. Their investments were larger, their trade greater. They had been the first to exploit the islands commercially, and had always taken a more direct and active interest in the government and politics of the Samoans. Their claim to the group was probably stronger than that of England.

An understanding was reached in November, and it was quite fitting that Great Britain agreed to withdraw entirely from the islands. By Anglo-German treaty, signed November 14 (1899), Germany retained full possession of all the islands of the Samoan group west of longitude 171° W. This included the entire group, with the exception of Tutuila and some near-by smaller islands of little or no importance. As a compensation for her abandonment of all Samoan claims, Great Britain accepted from Germany the latter's rights in the Tongan Islands, a group lying several hundred miles south of Samoa ; England also received the German islands of Choiseul and San Isobel, of the Solomon group. Germany also made certain other concessions to England in Africa.

On December 2 (1899), a treaty was accordingly signed in Washington by the representatives of the three powers. As this document marks the final episode of American complicity in Samoan affairs, it is quoted in full.

A Convention signed at Washington, December 2, 1899, between the United States, Germany, and Great Britain, to adjust amicably the questions between the three Governments in respect to the Samoan group of islands.

The President of the United States of America, His Imperial Majesty the German Emperor, King of Prussia, and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, desiring to adjust amicably the questions which have arisen between them in respect to the Samoan group of Islands, as well as to avoid all future misunderstanding in respect to their joint or several rights and claims of possession or jurisdiction therein, have agreed to establish and regulate the same by a special convention; and whereas the Governments of Germany and Great Britain have, with the concurrence of that of the United States, made an agreement regarding their respective rights and interests in the aforesaid group, the three Powers before named in furtherance of the ends above mentioned have appointed respectively their Plenipotentiaries as follows:

The President of the United States of America, The Honorable John Hay, Secretary of State of the United States;

His Majesty the German Emperor, King of Prussia, His Ambassador Extraordinary and Plenipotentiary, Herr von Holleben; and

Her Majesty the Queen of Great Britain and Ireland, Empress of India, the Right Honorable Lord Pauncefoot of Preston, G. C. B., G. C. M. G., Her Britannic Majesty's Ambassador Extraordinary and Plenipotentiary:

who, after having communicated each to the other their respective full powers, which were found to be in proper form, have agreed upon and concluded the following articles:

ARTICLE I

The general Act concluded and signed by the aforesaid Powers at Berlin on the 14th day of June, A. D. 1889, and all previous treaties, conventions and agreements relating to Samoa, are annulled.

ARTICLE II

Germany renounces in favor of the United States of America all her rights and claims over and in respect to the Island of Tutuila and all other islands of the Samoan group east of Longitude 171° west of Greenwich.

Great Britain in like manner renounces in favor of the United States of America all her rights and claims over and in respect to the Island of Tutuila and all other islands of the Samoan group east of Longitude 171° west of Greenwich.

Reciprocally, the United States of America renounce in favor of Germany all their rights and claims over and in respect to the Islands of Upolu and Savaii and all other Islands of the Samoan group west of Longitude 171° west of Greenwich.

ARTICLE III

It is understood and agreed that each of the three signatory Powers shall continue to enjoy, in respect to their commerce and commercial vessels, in all the islands of the Samoan group privileges and conditions equal to those enjoyed by the sovereign Power, in all ports which may be open to the commerce of either of them.

ARTICLE IV

The present Convention shall be ratified as soon as possible, and shall come into force immediately after the exchange of ratifications.

In faith whereof, we, the respective Plenipotentiaries, have signed this Convention and have hereunto affixed our seals.

Done in triplicate, at Washington, the second day of December, in the year of Our Lord, one thousand eight hundred and ninety-nine.

JOHN HAY	[SEAL.]
HOLLEBEN	[SEAL.]
PAUNCEFOTE	[SEAL.]

The treaty was ratified by the Senate, January 16, 1900.

The trials of the Samoans, which they had endured for many years under the administration of three jealous protectors, are ended. Whether they will in future fare better or worse under the single rule of Germany is a matter that concerns only them and Germany,—the United States is happily relieved from all further responsibility in the matter. The entangling alliance so freely criticised by President Cleveland and by Secretary Gresham has been broken, not because of Washington's advice, but because it proved burdensome

and dangerous to the peace of the United States. After a trial of ten years the outcome of the Berlin Act may be viewed in the light of Mr. Gresham's prophesy. The first departure of the United States from a traditional and well-established policy of avoiding entangling alliances, was not a successful venture. No evidence can be found of detriment suffered before, nor of substantial advantages afterward gained, to demonstrate, in this particular case, the wisdom in the change of that national policy of non-interference. The responsibilities imposed upon the United States, as a party to the Berlin Act, brought only vexatious cares, expense, the loss of several naval vessels, and many lives. Several times it threatened to involve the country in war.

Among the assets, if there are any, may possibly be counted the acquisition of Tutuila, and its valuable harbor of Pago-Pago; but the acquisition of this can hardly be ascribed to the results of the Berlin treaty. American rights in this harbor antedated that treaty, and were held in abeyance so long as the triple dominion existed. United States' trade with Samoa is at best very small, and its increase in the decade from 1889 to 1899 was but a meagre return for the amount of energy expended in its behalf.

The disposition of the islands, according to the recent treaties, is wholly satisfactory to all parties. Germany has a coveted satisfaction of ruling supreme over Samoa (barring Tutuila). A strong national sentiment, possibly the outgrowth of an early interest felt in colonial expansion in the South Seas, has placed the German valuation upon Samoa far in excess of its real value. For the gratification of this sentiment, Germany was willing to give England substantial compensation elsewhere, with which compensation England is apparently perfectly content.

The United States has acquired all it has ever desired or really needed in Samoa, — a valuable harbor and coaling station. None of the islands secured by the treaty are sufficiently large or populous to present any troublesome problem for their government. The island of Tutuila has a total superficial area of something over two hundred square miles,

and has an estimated population of about three thousand. The natives are peaceful, unarmed, and well disposed to the United States. The harbor of Pago-Pago is an ideal one, said to be the best in the Pacific; it is, moreover, susceptible of easy defence. Its strategic value is very great. Several much smaller islands to the east and south of Tutuila (of no particular importance) fall to the share of the United States; but as these are of no real value to any one except their own native inhabitants, they are not likely to become a burdensome care.

Contracts have been made for the improvement of Pago-Pago harbor, for coal-sheds, docks, etc. On February 12, 1900, the President formally placed the island of Tutuila under the administration of the Navy Department, and Commander B. R. Tilley, U. S. N., became first military governor.

Here, the "Samoan episode" closes.

IV

THE MONROE DOCTRINE

IV

THE MONROE DOCTRINE

THE instinct of self-preservation is the first law of nature. As a natural law governing all living creatures, it takes precedence over the social or artificial regulations of mankind. Under whatever municipal code an individual exists, he may freely ignore it when necessary to preserve his life; his only solicitude, if placed on trial, need be to prove that his alleged wrongful acts were committed in self-defence. And so it is, to a certain extent, with nations. Like individuals, they stand before the public law—the law of nations—with definite rights and duties. First and fundamentally, they possess the right of sovereignty and independence, and a freedom of action that is limited only by the obligation to respect similar rights in other nations. As in the case of individuals, the exercise of their own rights must be without injury to others.

The international law permits one nation to violate the sovereignty of another in but few exceptional instances. Thus, for humanity's sake, a continued course of cruelty or needless bloodshed on the part of any one power may arouse international concern and justify intervention. But any act intending to destroy the existence of a nation or to limit its sovereignty, when committed under the plea of self-defence, must find its justification in a code higher than international law. In the common law, homicide in self-defence is justifiable. In this respect, therefore, there is a distinction between the common and the public laws, the latter not yet having fully come to recognize self-defence as a justifiable cause of action. But though the public

law has not distinctly provided for acts committed under the plea of self-preservation, it is constrained to tolerate them.

The propriety of all defensive acts must be judged by the peculiar circumstances surrounding them, for it is obviously impossible to frame definite and specific rules to govern all cases, as it is impossible to measure, with accuracy, the amount of danger that, at any given time, may threaten a state from without.

It may be said, therefore, that the duty of states to respect the sovereignty of their neighbors is subordinated to their natural right of self-preservation, — all social laws being in abeyance when existence is in question. History furnishes a long list of infringements upon the sovereignty of states by others which, appearing to have been committed in a spirit of self-protection, have been allowed to pass as excusable. Such extreme cases as the actual invasion of foreign territory, in order to protect persons or property, to suppress insurrection, or to put down race rebellions, are upon record, and often they have been regarded as entirely proper. Thus, under certain circumstances, one state may actually assert its sovereignty to the extent of using violence to accomplish ends within the territory of another, and still not run counter to the dictates of law. The doctrine of self-protection may take such extremes, but it is unfortunate that some international arbiter has not yet been constituted to determine the good faith of the nation or nations so intervening. In Europe the greater nations exercise a watchfulness over each other by a *quasi* agreement, expressed or implied, known as the "Balance of Power," whereby all are pledged to prevent any one power from encroaching too greatly upon another, and thereby unduly acquiring a strength and influence that might prove dangerous to the welfare of the others. To this general policy may be attributed the present integrity of the Ottoman Empire. In the same manner was Belgium established, and now upheld and maintained as an inviolable state; for such reasons have the Balkan states been shifted to and fro at the will of the greater powers.

It is impossible to anticipate what course of action may suddenly be made necessary by national complications, and it would be useless, therefore, to attempt a definition of all the extraordinary powers a sovereign state may exert in a moment of extreme danger. Suffice it to say, it may do anything within reasonable bounds; the consciousness of right that exists in all hearts will give sanction, provided it is clear, and above all doubt, that the danger is real and that the act done is in good faith, and not prosecuted beyond the strict requirements of self-defence.

The celebrated Monroe Doctrine of the United States finds its origin and its justification in principles of a similar character. In this instance there was no actual intervention, — no overt act on the part of the United States in derogation of what, in the public law, had been accepted as the sovereign rights of other nations. In this case Mr. Monroe did not choose to wait until the actual commission of threatened acts which, in his judgment, would endanger the integrity and peace of the United States, but gave notice to the European powers that certain enumerated acts, if perpetrated, would be resisted by forcible intervention by his government. The doctrine in its character is rather prophylactic than curative, — preventive rather than remedial.

In so far as the Monroe Doctrine forbids other sovereign powers to do what properly belongs, as of right, to all sovereign powers, it can find no place in international law. It is useless to seek, through ingenious argument, to invest it with the sanction of an international code. It was purely and simply one of those measures of self-defence which, falling outside the legal prerogatives of a sovereign state, is justified among civilized nations only by virtue of an extreme necessity. This has been essentially the American view. It is quite certain that the other civilized nations of the world have not accepted the principles enunciated in this doctrine as a part of the public law, nor do they admit that its existence is, or ever was, necessary to the safety of the United States. In fact, the many protests from abroad clearly indicate that the world in general has regarded this national

policy of the United States as wholly beyond the public law or the requirements of national self-defence.

In respect to colonization, all authorities seem to agree that territory, unoccupied and belonging to no one, may be appropriated and held by any nation when its subjects enter it with the intention of remaining. So far as the Monroe Doctrine relates to colonization, the question at once arises — was there any territory properly *res nullius*, or belonging to no one, in either of the American continents when President Monroe issued his edict against colonization in 1823? If not, the interdiction was useless; if there were territory capable of appropriation at that time, the declaration, under the international code, was clearly illegal. It proposed a third requisite to the right of colonization, *to wit*; the consent of the United States. No amount of argument can reconcile the proposition with the public law, nor can any considerations of self-defence invest it with strict legal authority. If such were the case, the United States would be justified in seizing Canada, and Great Britain would be wrong in seeking to defend a colony that threatened the United States with a contiguous boundary line of three thousand miles.

— Now, to what length a nation may go in throwing off its obligations to respect the sovereignty of its neighbors on the score of self-preservation, or even of protection or immunity against less serious attack, is a question of politics rather than of law. In the nature of things there can be no exact and ascertainable measure of danger or of security; it is manifestly difficult to say at just what point one may bid another come no nearer.

Bearing in mind, then, that forcible intervention in the affairs of other nations is excusable only when committed in self-defence and when the danger is real, imminent, and direct, — not speculative and contingent, — and only when the interference is itself actually necessary, and is kept within the limited bounds authorized by the circumstances of the case, and, furthermore, when the interference is not resorted to with a view of aggression or spoliation, — then, and from such standpoint only, can the so-called “legal aspects” of

the Monroe Doctrine be examined. Was the United States threatened from abroad in 1823? If so, do the dangers which threatened the United States in 1823, and called into being the principles of the Monroe Doctrine, threaten the country now? Would a new colony of European origin in South America be a menace to the best interests of the United States to-day? If a doctrine that found its origin in a genuine call for self-preservation is no longer upheld and sustained by that necessity, is its continuance as a national policy longer justified?

The widest divergence of opinion is to be found in the United States upon this subject, no two writers to-day agreeing precisely upon the propriety, the wisdom, or the value of the Monroe Doctrine as a defensive measure. Indeed, all phases of the doctrine, from its alleged origin in the political conditions of our earlier national existence, its authorship, its applications, in fact, its very meaning, have furnished ground for endless discussion. Suffice it to say, the principles involved grew out of certain conditions of our national growth, and the doctrine was then invoked as a defensive measure to meet what seemed to be a menace to our institutions. That which sprang out of an emergency has become a vital principle in the foreign policy of the United States; indeed, it seems to have become a sort of fetish for national worship, — the *ignis fatuus* of American politics. Created as it was to meet the exigencies of the time, it has been expanded into a national determination that the new world must be kept sacred from all European colonization or use. In the course of changing administrations, and with the consequent changes of opinion at the White House and the Capitol, the doctrine has too often been distorted from its original meaning, and sometimes used to serve the ends of party warfare. It has been quoted as authority for constituting the United States Government the guardian and protector of all the nations of the American continents. By some it is limited to defensive measures; by others its interpretation would justify all sorts of forcible aggression. From a mere right to protect ourselves, the Monroe Doctrine has been

converted into a *right* to annex Cuba and any other of the West India Islands. In it is found the right to construct the Nicaragua Canal on foreign soil, and subject its shores to American jurisdiction ; for, by seizing and controlling these outposts, and, in fact, all other contiguous or adjacent lands it is urged that the United States would be following a consistent policy of self-defence. There is a danger that the more powerful and formidable the United States becomes and the more grasping and insatiate its policy of expansion the more unrestrained will become the Monroe Doctrine. It may, in time, be too frequently construed to justify acts which never entered the conceptions of its author.

I

A clearer understanding of the principles embodied in the Monroe Doctrine may be obtained by glancing at a few incidents in the history of our foreign relations from the ending of the Revolutionary War (1783), to the close of President Monroe's administration (1824).

Although the Monroe Doctrine itself, as announced in 1823, was ostensibly a defensive measure against the threatened aggressions of a powerful European alliance, there can be no doubt that it was also the announcement of a general policy that had been gradually forming in the American mind for a number of years. This sentiment was the natural outgrowth of the antagonism between the principles of democratic government, as adopted in the United States, and the opposing doctrines of monarchical government, which obtained upon the continent of Europe.

When the Revolutionary struggle was over, and England had acknowledged the independence of the United States (treaty November 30, 1783), the newly created nation was exhausted and disorganized ; its resources were small, and the country was great only in its future possibilities. The territory it occupied was a mere strip along the eastern coast of the vast and little-known American continent. On its entire northern frontier lay English colonies that

were more than passively unfriendly ; British fortifications and hostile Indians along the lakes and upper Ohio River impeded expansion to the west. On the south and the southwest, France and Spain overshadowed the pioneer republic in extensive domain.

Under these conditions, the earlier American statesmen were tempted to profit by the rivalries of European nations, and thus obtain by foreign alliances, the strength necessary to carry the republic through the critical period of infancy. A single venture in this direction (the treaty with France, of 1778) taught the fathers a useful lesson. It was but a few years later that France, finding herself involved in war with Great Britain, promptly called upon the United States to fulfil her treaty obligations. This the United States was unable to do. To invite another war with England would have been suicidal ; to remain neutral was to offend France. In either case, the legitimate result of meddling in the affairs of Europe seemed to be war ; and although actual war was in this instance avoided, a bitter party-spirit, aroused by French sympathizers, produced dissensions threatening the peace of the nation. From the first, however, the wiser statesmen of the period realized not merely the advisability, but the necessity, of holding aloof from all foreign entanglements. This sound principle found its best expression in Washington's farewell address, and long continued to be the watchword of succeeding administrations, and the cornerstone of the nation's foreign policy. Each President in turn guarded this vital principle of non-intervention, and the young nation greatly prospered in its career, paying no tribute to the demands of needless war. Underlying the reasons usually given for maintaining an isolated political position in the world, namely, the weakness of the country, and its physical inability to cope with the older European nations, a subtle motive is easily traced. It was felt that the system of popular government inaugurated by the United States would be watched with some apprehension by the crowned heads of Europe. If the experiment in constitutional government should prove successful, its effect on

European forms of government was obvious. Indeed, in some of the European nations a decided hostility had already been manifested against tyrannical institutions. The belief that absolutism was divinely ordained, or that it represented the best form of government, was being rudely shaken throughout Europe. Royalty was naturally suspicious of all movements toward popular institutions, and the fear that monarchical Europe would regard somewhat sullenly the success of democracy in America, was not unreasonable. Here, then, was a source of danger to be guarded against; the liberty so dearly bought was truly worth the price of eternal vigilance.

A double peril was therefore presented to the struggling young nation at the very beginning: First, the danger of being tempted into unfortunate alliances with stronger powers; and secondly, that of unprovoked attack by the forces of monarchical government from purely political motives. In those days royalty commanded stronger armies and navies than the United States could possibly support. The ideas of popular sovereignty and the divine right of kings were essentially antagonistic; and the notion that the crowned heads of the old world might seek to strangle the infant giant of the new, was not altogether unreasonable.

Mr. Jefferson expressed this apprehension as early as 1785 when he wrote to Monroe from Paris, urging him to add his "testimony to that of every thinking American, in order to satisfy our countrymen how much it is in their interest to preserve uninfected by contagion those peculiarities in their government and manners to which they are indebted for those blessings." In his second annual address of December 1798, John Adams said:—

To the usual subjects of gratitude I cannot omit to add one of the first importance to our well being and safety; I mean that spirit which has arisen in our country against the menaces and aggression of a foreign nation. A manly sense of national honor, dignity, and independence has appeared which, if encouraged and invigorated by every branch of the government, will enable us to view undismayed the enterprises of any foreign power and become the sure foundation of national prosperity and glory.

But it was Jefferson who grasped the idea of foreign antipathy more definitely, perhaps, than had any of his contemporaries. Although a strict constructionist, he violated his convictions of constitutional interpretation and purchased the Louisiana territory to keep it out of the hands of France or England, either of which he regarded as a dangerous neighbor. "Previous, however, to this period," he urged upon a hesitating Congress "we had not been unaware of the danger to which our peace would be perpetually exposed whilst so important a key to the commerce of the Western country remained under foreign power." This sudden acquisition of a large contiguous territory, bringing into the nation an empire to be settled and prepared for statehood, strengthened the bonds of the federation, and gave fresh vigor to the Republic. It also furnished additional reason for the strict observance of the principles of non-interference, and for redoubled watchfulness against all manner of foreign aggression. With new cares and responsibilities, these principles developed still more rapidly, and found final expression in President Monroe's famous message twenty years later.

The purchase of Louisiana gave to the United States a color of title to the Spanish province of West Florida, and existing conditions at home and in Spain made it likely that the United States could acquire this valuable strip of coast land. The title in question was perhaps less complete than the determination to secure it; for after a proclamation to the effect that the United States would hold the territory pending future settlement, President Madison addressed the Senate, January 3, 1811, as follows: —

Taking into view the tenor of these several communications, the posture of things with which they are connected, the intimate relation of the country adjoining the United States eastward of the river Perdido to their security and tranquillity, and the peculiar interest they otherwise have in its destiny, I recommend to the consideration of Congress the seasonableness of a declaration that the United States could not see without serious inquietude any part of a neighboring territory in which they have in differ-

ent respects so deep and so just a concern pass from the hands of Spain into those of any other foreign power. . . . The wisdom of Congress will at the same time determine how far it may be expedient to provide for the event of a subversion of the Spanish authorities within the territory in question, and an apprehended occupancy thereof by any other foreign power.

Two months later Congress indorsed the policy of the President in a resolution declaring : —

Taking into view the peculiar situation of Spain and of her American provinces, and considering the influence which the destiny of the territory adjoining the southern boundary of the United States may have upon their security, tranquillity, and commerce, . . . the United States, under the peculiar circumstances of the existing crisis, cannot, without a serious inquietude, see any part of the said territory pass into the hands of any other foreign power.

Here then was a shadow of the Monroe Doctrine cast before. The "destiny" of the Republic was proving itself; it figured here as a factor in determining a question of foreign policy. The acquisition of East Florida (the remaining portion of the old Spanish province that constitutes in part the present state of that name) was made in quite the same spirit, *i.e.* to remove the liability of attack from contiguous territory. In point of fact, Florida had long been a refuge for outlaws: it was the rallying-point for many filibustering expeditions, both Spanish and English, against the United States. In the War of 1812 it had been used by England as a base of hostile operations. The resolutions of Congress of 1811 could with equal propriety be applied to the case of East Florida. General Jackson was sent to clear the way for annexation — a task he accomplished in his own vigorous way.

In relation to these earlier accessions of territory, the spirit and purpose of the Monroe Doctrine is apparent, though ill defined and crudely expressed. The nation, however, had not yet reached that point of development and strength when even in self-defence, it could proclaim a policy seemingly antagonistic to European interests. When the War of 1812 had closed the United States entered upon a

new era. Old party lines were dissolving, and the violent issues of the past twenty years were obsolete. The formative period of its existence was over, the experiment of democratic government was succeeding admirably. The nation had greatly expanded in territory and wealth, and was assuming a degree of self-confidence, a sense of power, that enabled it to study its own foreign policies in a calm, philosophic light, and to speak of them, if need be, more authoritatively. For forty years a nebulous public sentiment had been steadily approaching the positive form it subsequently took; in 1823 a definite threat coming from without, it suddenly crystallized into a clearly and an openly expressed policy.

II

The immediate causes leading to the enunciation of the Monroe Doctrine in 1823 are to be found in a series of events beginning with the revolutionary movements in South and Central America and culminating in the threat on the part of a European alliance of strong powers to intervene in behalf of Spain and in the interests of monarchical government.

The operations of Napoleon in Spain had left that already palsied nation in a deplorable condition of helplessness. Profiting by her weakness, her American dependencies began, one after another (from 1812 to 1820) to set up their own standards, and establish themselves as independent republics. In the South American struggles for freedom, North American sympathy was strongly aroused. Neutrality was duly proclaimed, but material aid was continually furnished by citizens of the United States to the South and Central Americans, while frequent expressions of sympathy were made by Congress. Even before the colonies had actually revolted, and while absolutism in Spain was receiving a thrust from the French army, Jefferson, watching the contest from afar, understood well the import of events and the probable effect on the cause of popular government. He wrote to Governor Claiborne (October 29, 1808): --

The truth is that the patriots of Spain have no warmer friends than the administration of the United States; but it is our duty to say nothing and to do nothing for or against either. If they succeed we shall be well satisfied to see Cuba and Mexico remain in their present dependence, but very unwilling to see them in that of either France or England, politically or commercially. We consider their interests and ours as the same, and that the object of both must be to exclude all European influence from this hemisphere.

In this statement from high authority the historian Schouler finds the germ of the Monroe Doctrine. When the Spanish dependencies began to declare their independence, and the grasp of the Old World upon the new one began to loosen, Jefferson's bold statement found active support in all directions. Henry Clay, the leader of his party in Congress, exerted himself to the limit of his oratorical powers in the "emancipation of South America." The continual assaults upon the administration of Monroe by this opposition leader may have caused the President to recognize the independence of the revolted colonies sooner than he otherwise would have done, although it is clear from the words of nearly all his annual messages, that Monroe had his heart in the success of freedom's cause in the Western Hemisphere quite as fully as had Clay, but he moved more cautiously and with far more deliberation than the eloquent and impetuous member from Kentucky. In the autumn of 1817, the first year of Monroe's presidency, he sent a commission to South America for the purpose of investigating the political conditions and of determining if there were any *bona fide* revolutionary governments worthy of recognition. The commission was composed of men well-known for their radical views of republicanism, yet in this respect they differed in regard to the proper course to be pursued by the United States in the matter of recognizing the sovereignty of the seceding Spanish colonies.

In the midst of cabinet discussions regarding this question, news suddenly came from abroad (during the early part of 1818) that a movement had been inaugurated in

Europe to intervene in the affairs of South America. Further confirmation of these first reports came from several foreign ministers resident in Washington. John Quincy Adams, the Secretary of State, instantly became alive to the situation, and somewhat curtly announced that "if the European alliance undertook to settle matters which concerned us so closely, and without consulting us, they should not be surprised if we acted without consulting them." Monroe shared in these apprehensions of the Secretary of State and feared that the rumors of a European combination to aid Spain in maintaining her old-time supremacy in the Americas might prove true. Mr. Adams at once sounded the British Minister in regard to England's attitude toward the South American question; indeed, the President desired Great Britain to join with the United States then and there in recognizing the independence of the South American colonies.

Across the Atlantic, the American Minister in London, Richard Rush, was instructed to watch closely the intentions of the reported European alliance, one of the alleged objects of which was to interfere in behalf of Spain in America. Rush approached the English Premier, Castlereagh, whose sympathies were thought to be with the European alliance, though the commercial interests of his country called for a greater freedom of trade with the West Indies and Central America than Spain had been willing to grant. Castlereagh, however, believed this end could be effected by European mediation, and that by securing to Spain her complete supremacy over her colonies, she might be coerced into adopting more liberal trade regulations as a just compensation for services rendered. Rush could not succeed in winning over the conservative Castlereagh to his original proposition, that of checking all future juggling with the question by a prompt acknowledgment of the independence of South America.

Great relief was felt in Washington upon the declaration of the allied powers of Europe, whose interference in South America was so much feared by Monroe and his cabinet,

that they did not contemplate using force to subjugate the revolting Spanish colonies. In his annual message of November 16, 1818, President Monroe said : —

From the view taken of this subject, founded on all the information that we have been able to obtain, there is good cause to be satisfied with the course heretofore pursued by the United States in regard to this contest, and to conclude that it is proper to adhere to it, especially in the present state of affairs.

Only two months later, however, the President called together his cabinet to discuss the subject of recognizing the independence of Buenos Ayres, a measure he proposed and defended vainly against the adverse counsels of his advisory board. About this time Adams refers in his diary (May 29, 1819) to an episode that again places on record his views relating to the policy of the United States toward foreign interference in the affairs of the American states. The Russian Minister, Mr. Poletica, had been instructed from Petersburg to use all his influence with the administration to keep the United States from rupturing the bonds of amity that existed between them and Spain. The snapping of tender ties of course related to the recognition of the South American states, and Mr. Poletica went so far as to intimate that unless the United States followed a policy in harmony with the aims of the European alliance she would find herself, however unwilling, obliged in the end to "follow the impulse of Europe combined."

I related to him [Mr. Poletica] all that has been done by us concerning the South American question; told him we were convinced that Buenos Ayres at least would maintain her independence of Spain; that sooner or later they must be recognized as an independent power; that we had thought that the time would before now have arrived when they might justly claim this as a right, but from the time when we learnt that the allies had determined, that whatever might be the event of their mediation, not to use force against the South Americans, the President had concluded that we might also forbear to take an immediate, decisive part in their favor.

At the opening of Congress in December, 1819, nothing

further had been done toward the recognition of the South American states. The President said in his annual message (December 7, 1819) : —

This contest has from its commencement been very interesting to other powers, and to none more so than to the United States. A virtuous people may and will confine themselves within the limit of a strict neutrality ; but it is not in their power to behold a conflict so vitally important to their neighbors without the sensibility and sympathy which naturally belong to such a case.

At the reading of the next annual message, November 4, (1820), the situation was little changed. No further threats from the European alliance having come across the sea, the United States had not been moved to act. The President said : —

No facts are known to this Government to warrant the belief that any of the powers of Europe will take part in the contest, whence it may be inferred, considering all circumstances which must have weight in producing the result, that an adjustment will finally take place on the basis proposed by the colonies. To promote that result by friendly counsels with other powers, including Spain herself, has been the uniform policy of this Government.

Henry Clay never ceased his attacks upon the administration for what he considered its almost criminal negligence in abandoning the great cause of liberty. By extending our recognition of their sovereignty it would not only give encouragement to the states struggling to free themselves from the clutches of tyranny, but it would give as well “additional tone, and hope, and countenance to the friends of liberty throughout the world.” Clay saw deeper reasons why the United States should lend a hand to her Southern neighbors. In a great speech at Lexington in 1821, he said : —

It was evident after the overthrow of Bonaparte that the alliance, by which that event was unexpectedly brought about, would push the principle of *legitimacy*, a softer and covered name for despotism, to the uttermost extent. Accordingly, the present

generation has seen, with painful feeling, Congress after Congress assembling in Europe to decide without ceremony, the destiny and affairs of foreign independent states. And if we, the greatest offender of all against the principle of legitimacy, had not been brought under their jurisdiction, and subjected to their parental care, we owed the exemption to our distance from Europe and to the known bravery of our countrymen. But who can say, that has observed the giddiness and intoxication of power, how long this exemption will continue? It had seemed to him desirable that a sort of counterpoise to the holy alliance should be found in the two Americas in favor of national independence and liberty, to operate by the force of example and by moral influence; that here a rallying-point and an asylum should exist for freemen and for freedom.

Adams agreed with Clay in the broad principles, but differed with him only in the course the United States should practically adopt before occasion called more loudly for action. He told Mr. Clay that he never doubted the final issue of the struggle in South America, and that he believed it to be better policy to take no active part. "The principle of neutrality," he continued, "to all foreign wars was, in my opinion, fundamental to the continuance of our liberties and our Union." Wishing well to the cause of freedom in South America, he had yet to see better evidences that the South Americans meant to establish "free or liberal institutions of government."

As events turned out, Clay's vision seems to have proved the clearer, but Adams' conservative action was probably the wiser. However, no more alarming threats from abroad came, and our recognition of the South American states was not effected until May, 1822.

The previous year Spain had ratified the treaty ceding the Floridas, and with that vexed question off the programme, the State Department found itself greatly relieved. With these pressing details out of the way, the administration was free to turn its attention to a more remote but much more important matter. The solicitude of the President and Secretary Adams was at once directed to the consideration of permanent opposition to European intervention in the

Americas. As already noted, the idea had been more or less steadily evolving for a number of years, and had found occasional expression as one circumstance or another had inspired it in the writings and speeches of Jefferson, Madison, Adams, and Clay, and members of Congress. At last the nation had arrived at the point when its own sense of power, that gratifying feeling of self-confidence, gave the assurance of weight to any foreign policy it might choose to adopt, and especially in reference to such matters as related purely to the advancement of Western-world interests. With one exception the newly created states of Central and South America, established republican forms of government, and it seemed more than ever to be true that the political world was dividing itself into two camps, — the one in Europe following the older conservative ideas of government, and the other in the Western Hemisphere embracing the more progressive ideas of republicanism.

The President and his cabinet were fully aware of the natural antagonism between these diametrically opposing political systems. Already from an alliance of powerful monarchs, murmurings of hostility to popular government had come from abroad. No direct conflict was in prospect, but it was well to prepare for it. In his annual message of December 3, 1822, President Monroe went to work upon that structure whose foundations had already been laid and cemented, and which, in the following year, he completed in all its towering proportions.

Whether we reason from the late wars [in Europe] or from those menacing symptoms which now appear in Europe, it is manifest that if a convulsion should take place in any of those countries it will proceed from causes which have no existence and are utterly unknown in these states, in which there is but one order, that of the people, to whom the sovereignty exclusively belongs. Should war break out in any of those countries, who can foretell the extent to which it may be carried or the desolation which it may spread? Exempt as we are from these causes, our internal tranquillity is secure; and distant as we are from the troubled scene, and faithful to first principles in regard to other powers, we might reasonably presume that we should not be molested by

them. This, however, ought not to be calculated on as certain. Unprovoked injuries are often inflicted, and even the peculiar felicity of our situation might with some be a cause for excitement and aggression. . . . The United States owe to the world a great example, and, by means thereof, to the cause of liberty and humanity a generous support.

The following year the anticipated threat from Europe came. The allied sovereigns aimed a blow at the new exponents of democracy, and the protesting answer of the United States was given sharp and clear in the President's message (1823).

III

After the fall of Napoleon at Waterloo, the four powers | Austria, Russia, Prussia, and England, that had previously allied themselves for the purpose of opposing the advance of the "man of destiny," met by their representatives in Paris, in the fall of 1815, and there renewed their political ties by a fresh treaty (November 20). In this convention the four allied monarchs, expressing their desire to "fix beforehand the principle which they proposed to follow in order to guarantee Europe from dangers by which she may still be menaced," adopted four resolutions: first, to prevent Napoleon from regaining power; second, to maintain the government of France; third, to keep their army of occupancy in France safe from attack; and fourth, to meet again at the expiration of three years in order to consult further, and "take such measures as should then seem to be best fitted to preserve the peace and happiness of Europe."

This quadruple alliance has been erroneously referred to | by authors as the "Holy Alliance." The real "Holy Alliance" was quite a different combination, and originated in this way. The Czar of Russia was much elated by the defeat of Napoleon. To him the triumph of the allies — of which he was one — over this seemingly invincible foe, appeared to be no less than a direct act of God to save the righteous,

and to confound the wicked. He became so impressed with the truth of this remarkable manifestation of Divine Providence, that, in order to better merit the favors of the Supreme Being, he determined, thereafter, to rule his empire strictly in accordance with the principles of the Christian religion, and still further, to induce his neighbors to do likewise. In this happy resolve the king of Prussia and the Emperor of Austria joined with the Czar, and the league was christened the "Holy Alliance." England, when invited, declined to become a party, — Castlereagh, the English Secretary for Foreign Affairs, reporting to the ministry that the Czar was no doubt mentally unbalanced. Even Metternich called the treaty "verbiage." At all events, the league was formed, the signers declaring that they "in consequence of the great events [those leading to the defeat of Napoleon] . . . and of the blessings which it has pleased Divine Providence to shed upon those states. . . . Declare solemnly, that the present act has no other object than to show . . . their unwavering determination to adopt for the only rule of their conduct . . . the precepts of their holy religion, the precepts of justice, of charity, and of peace. . . ." The three sovereigns would "remain united by the bonds of a true and indissoluble fraternity." Considering themselves "only the members of one Christian nation," they looked upon themselves as "delegated by Providence to govern three branches of the same family, to wit: Austria, Prussia, and Russia." They confessed that there was really no other sovereign than "Him to whom alone power belongs of right," etc. The title of the league is derived from the closing paragraph of the treaty (September 26, 1815): —

ARTICLE III. — All powers which wish solemnly to profess the sacred principles which have delegated this act, and who shall acknowledge how important it is to the happiness of nations, too long disturbed, that these truths shall henceforth exercise upon human destinies all the influence which belongs to them, shall be received with as much readiness as affection, into this Holy Alliance.

Into this combination France, Spain, Naples and Sardinia

entered. The Holy Alliance accomplished nothing, and there is no reason to suppose that its members intended to use other than their own good examples to accomplish the ends in view. It was a foolish pledge, conceived in a moment of religious fervor, and as completely disregarded in the practical lives of the signers as though it had never been made. There is no evidence whatever, tending to show that the allies had combined for the purpose of opposing the growth of liberalism. It is the other league,—the Quadruple league that had organized to defeat Napoleon, and that had renewed its bonds in the treaty of Paris, November 20, 1815,—wherein the propaganda of absolutism was afterward born. Now it so happened that this quadruple alliance, a few years later, quite lost its original identity. England had withdrawn from it, and France and Spain had entered. With the fall of Napoleon, the original purposes for its existence naturally became extinct; but instead of dissolving, the alliance continued to live, and to take to itself entirely new objects and ideals in accordance with the changing political conditions in Europe. Now because these new ideas seemed to be in harmony with the vague ideas expressed in the Czar's Christian Family Compact of September 26, 1815, the alliance took shelter under the wing of that forgotten association, and borrowing its title, which, to the zealous monarchs appeared a good one, plumed itself the "Holy Alliance."

Napoleon had stood before the world as an exponent of liberal ideas, notwithstanding the fact that he filled the thrones of Europe with his relatives and created himself Emperor of France. Upon his final defeat and exile, a revival of absolutism set in throughout Europe, except, perhaps, in England, where liberal ideas had gained too firm a footing ever to be uprooted by the mere changing tides of popular sentiment. In France, the same people, who fifteen or twenty years before had idolized Benjamin Franklin, the apostle of democracy, and who had followed Napoleon in his march against absolutism, now welcomed the restoration of the Bourbons with wild acclaim.

Everywhere royalist mobs tore down the emblems of popular government; friends of liberalism were silenced or shot; the nation was purged of its democratic sentiments, and absolutism was rampant. The Bourbons were resurrected, and with great pomp and ceremony Louis XVIII was crowned king. In Austria, the reaction was equally pronounced. Metternich, the uncompromising enemy of progressive ideas, earnestly exerted himself to stamp out every vestige of liberalism, both at home and abroad. He induced Ferdinand, king of Sicily, to withdraw his promises of granting a constitution to his people, and created himself the moral protector of the precious doctrines of divine right.

In Spain this same reaction against constitutional government was carried to a most astonishing extent. Ferdinand VII reëntered Spain in 1814, and was received by the people with the most extravagant demonstrations of welcome. He immediately proceeded to undo, with the heartiest approval of his subjects, all that had ever been previously accomplished in Spain in the way of progress. The constitution was burned in the market-place of Madrid; the Cortes was dissolved and abolished, and all of its decrees were declared void. Those suspected of liberal taint were exiled, and their writings destroyed. The prisons were crowded with those who failed to manifest proper enthusiasm in the backward movement. The lands of the Church were restored, the clergy exempted from taxation, and the inquisition reëstablished. The remarkable feature of this movement in Spain lies in the fact that it found its heartiest support in those, who, so few years before, had eagerly clamored for constitutional government. In the short space of two years Spain fell back into the lap of the dark ages, but her transatlantic colonies breathed a purer atmosphere. They were already in revolt.

In Russia and in Prussia the general conversion against constitutional government had not been so marked, possibly because the political pendulum had not swung so far in the other direction, and the returning swing was correspondingly short. The political systems of these two nations, however, were wholly autocratic.

Such was the color of political creeds in Europe when the ambassadors of the four powers forming the Quadruple Alliance, in accordance with their agreement of 1815, met in conference at Aix la Chapelle, October 1818. At this meeting it was decided to withdraw the allied army of occupation from France, that country having been thoroughly won back to the principles of absolutism, and having a legitimist on the throne. France was therefore taken into the alliance that was originally formed against her, making thereby a quintuple alliance. At Aix, the allies made a declaration that the tranquillity of Europe depended largely upon the united action and watchfulness of the five sovereigns composing the league, and that the league "has no other object than the maintenance of peace and the guarantee of those transactions on which the peace was founded and consolidated." "The repose of the world will be constantly our motive." Thus it will appear that the allies had virtually constituted themselves into a society for the regulation of European politics. The league had not yet declared the specific object of suppressing all popular movements against absolutism, but the reactionary movement in that direction throughout Europe had left its impress upon the hearts of the legitimate rulers, and, barring the English, the five rulers in question were firm adherents to the theory that royal power is based on divine right.

The exact meaning in the declaration of the allies at Aix was not altogether clear, but it pointed in the direction of assuming control of all European political affairs, and of insuring monarchical institutions. To this the English cabinet looked askance, remembering that "we have a parliament and a public, to whom we are responsible, and that we cannot permit ourselves to be drawn into views of policy which are wholly incompatible with the spirit of our government." Soon after the adjournment at Aix, the allies were called upon to act, and therefore to interpret, the true meaning of their vague declarations. It then became fully evident that they considered themselves the guardians of Europe, — of its peace, its progress, its religion, and its

morals; that it had become a society whose main object was the perpetuation of monarchical institutions, and that its paramount duty was to suppress, wherever found, all popular movements against such forms of government.

Great popular movements recur in the lives of nations with a strange regularity. Like the waves of the sea, with corresponding depressions between, these movements hurl themselves against the bulwarks of conservatism, and as quickly subside. So have the waves of liberalism risen and fallen in Europe; but, as in the swelling tides of the ocean, each succeeding wave reaches a higher point. The tremendous enthusiasm in Spain that greeted the reestablishment of Ferdinand VII when at its very climax, in 1820, suddenly cooled. The revolt of her American colonies had begun about eight years before, and had depleted Spain of her resources. The last dollar had been squeezed from the treasury, the last available man had been forced into the army, the last ship had sailed away with arms and ammunition, and all to no purpose. In 1820, the last regiment that could be mobilized for transatlantic service rebelled, and in a moment all Spain was in a ferment of revolution against the tyranny and oppression of Ferdinand. An incoming wave of liberalism swept over Spain, over Naples and Sicily, then over Portugal, and threatened to inundate France. Ferdinand was forced to grant a constitution to the people, and absolutism in Naples, Sicily, and Portugal collapsed. Frightened by the signs, Louis XVIII hastily called upon the allies to meet, which they accordingly did at Troppau, October, 1820. The English ambassador at Troppau was a silent spectator; the French envoys quarrelled among themselves, and the original founders of the alliance — Russia, Prussia, and Austria — were left to act as they saw fit. Now, if the rulers of peoples receive their right to govern through Divine Grace, and if they are the agents of God, whose mission on earth is to govern the children of men according to the will of Heaven, then it must necessarily follow that all attempts to depose a legitimate monarch are wicked. All liberal movements, therefore, are unholy; all revolutions against

the old hereditary families are sacrilegious. Such was the line of argument advanced at the conference. The three powers declared that, having crushed out the arch fiend of military tyranny and oppression (Napoleon), they now found themselves called upon to "put a curb on a force no less tyrannical, and no less detestable — that of revolt and crime."

Suiting their actions to their words, the allies called upon the aged king of Naples to meet them in Leybach in January, 1821, and take council with them concerning the suppression of a revolution which had forced him to accept a constitution and a parliament. While that old monarch was theorizing in Leybach, the king's son joined the popular party against him. The allies sent an Austrian army into Italy which defeated the prince, suppressed the rebellion and restored the old king upon the throne of Naples as an absolute ruler. Insurrections in Piedmont and in Greece were in the same manner crushed by the forces of the allies.

At Leybach, a new declaration of principles was issued, which was, in effect, a repetition of the Troppau circular. It announced that they (the allies) had "taken the people of Europe into their holy keeping, and that, in future, all useful and necessary changes in the legislation and administration of states must emanate alone from the free will, the reflected and enlightened impulse of those whom God has rendered responsible for power."

The next year the allies met in Vienna, adjourning thence to Verona (October, 1822), when the matter of the Spanish revolution was taken into most serious consideration. Spain was distressed by civil dissensions, Ferdinand had been driven into reassembling the Cortes, and the cause of liberalism was again advancing. It appeared more and more improbable that the exhausted nation could succeed in holding her transatlantic colonies, all of which were in revolt, and most of which had, to all intents and purposes, already acquired their independence. Ferdinand begged the aid of the alliance to regain his American possessions, and the great powers hesitated. Russia, Prussia and Austria, which stood firmly

by their anti-liberal doctrines, declared they would never recognize the seceded colonies until Spain herself had done so.

—English sentiment had not yielded to the principles of the allies. The notions of divine right were distasteful to a people who had prospered for centuries under constitutional government, and the principle of forcible intervention adopted by the allies seemed to the English ministry to be wholly improper. In the course adopted by the allies toward the revolutionary movements in Italy, England had no interests directly affected, but she had nevertheless protested against the unwarrantable interference of the powers in the affairs of Naples. But in the proposed movement against liberalism in Spain, to be discussed by the allied agents of the powers at Verona, England had a more direct and more substantial interest.

In earlier days, Spain's economic policy with her transatlantic colonies had been a rigidly exclusive one, but during their revolt, many of the tightly drawn commercial lines had been cut, and old barriers of trade broken down. English merchants had greatly profited thereby, and within a few years they had built up a large and growing trade in South America and the West Indies. In a continuance of these favorable conditions lay the motive of England's action. At the time of the meeting of the allies at Verona, the statesmen of England had about decided to send commercial agents, if not consular representatives, to the larger cities of South America — a course of action which ill accorded with the policy of the allies toward South America. England was not prepared, on the other hand, to go to the extremity of recognizing the independence of the new states at once, as the United States had done the previous year; yet to prevent a revival of commercial exclusion in the Spanish colonies, England was willing to take decided action. England believed that if Spain could subdue her rebellious colonies, she would be compelled at last to grant them commercial freedom; yet influenced by representations and petitions of her own commercial classes, England was perfectly willing to

see the colonists secure their independence, in the belief that political relations could be equally well established with them.

“Again the English had,” wrote M. Beaumarchais, author of “*La Doctrine de Monroe*” (p. 6), “the rare good fortune of finding their own particular interests conform to the noble cause of liberty, and they furthered well their real purposes by posing before Europe, either hesitating or hostile, as disinterested champions of Justice and Right.”

Lord Castlereagh, the Prime Minister, was chosen to represent England at the Congress of Verona, and the ambassador drew his own instructions, which were to oppose strenuously any proposed intervention in Spanish affairs. He further instructed himself to make known the intention of his country to follow her own commercial interests by sending diplomatic agents to South America.

The death of Castlereagh, before the meeting of the allies, brought Mr. Canning forward as Prime Minister, and he appointed the Duke of Wellington in Castlereagh's place to represent England at the Congress. At Verona the allies signed a secret treaty (November 22, 1822) to which only the names of Metternich, Chateaubriand, Bernstet (Prussia) and Nesselrode appear. The first two articles of this instrument are of especial interest.

The undersigned, specially authorized to make some additions to the treaty of the Holy Alliance, after having exchanged their respective credentials, have agreed as follows:—

ARTICLE I. — The high contracting powers, being convinced that the system of representative government is equally as incompatible with the monarchical principles as the maxim of the sovereignty of the people with the divine right, engage mutually, in the most solemn manner, to use all their efforts to put an end to the system of representative governments, in whatever country it may exist in Europe, and to prevent its being introduced in those countries where it is not yet known.

ARTICLE II. — As it cannot be doubted that the liberty of the press is the most powerful means used by the pretended supporters of the rights of nations, to the detriment of those Princes, the high contracting parties promise reciprocally to adopt all proper measures to suppress it, not only in their own states, but also in the rest of Europe.

It will be noted that in this treaty of November 22, 1822, in which England took no part, the allies, "make some additions to the Treaty of the Holy Alliance." Thus it appears how these four powers (the original Quadruple Alliance), by assuming to amend a treaty not originally of their own making, had appropriated to themselves the title and doctrines of the former Holy Alliance. One important step was taken at Verona. The Congress adjourned with the understanding that France, in the name of the Holy allies, should send an army into Spain, "to put an end to the system of representative government" which was struggling for existence beyond the Pyrenees. A French army, under the Duc d'Angoulême, crossed the frontier, and after a feeble resistance from the revolutionists, restored Ferdinand to a despotic throne (April, 1822). The next step of the allies seemed to be reasonably certain, — a movement against South American revolutionists. Their efforts against liberalism in Europe had been eminently successful, as demonstrated in Naples, in Sicily, in Piedmont, and lastly in Spain. Ferdinand, having been reinstated upon his throne, begged lustily for help to subjugate his colonies, both in the interest of Spain and in the cause of absolutism. The advisability of taking such a step had already been broached at Vienna, and freely discussed at Verona. Reports of these contemplated movements in the Americas had reached Washington, and had impressed the administration with a deep feeling of concern. It was feared that France might demand Cuba as a price for restoring Ferdinand, and it was quite certain that if the allies did interfere in America, the newly created republics would inevitably fall into the hands of the more powerful European nations. ¶ In order to determine upon a course of action relative to Spain's seceding colonies, the allies agreed to meet again in the autumn of 1823. In the meantime, however, the activity of Canning had marshalled the forces that opposed the ideas and projects of the Holy Alliance, and suddenly and unexpectedly to the allies, there came from Washington a warning to stop. As they developed in strength and resources, the people of the United

States had for many years been preparing a mine to be sprung when the proper time came. It was Canning who signalled the danger from abroad; it was Adams who placed the charge in position and adjusted the fuse, and it was Monroe who applied the match. The statement that the United States would resist the advance of the allies into the new world, as hinted in President Monroe's Message of 1823, together with the knowledge that England's sympathy was pledged to the United States, was quite sufficient to check any designs which the Alliance may have devised to stifle the cause of liberalism and constitutional government in the Western Hemisphere.

IV

When Canning became Minister of Foreign Affairs he was perplexed in regard to the proper attitude he should take toward the struggling Spanish-American colonies. England's commercial classes inclined toward the independence of these newly created republics; but true to her conservative notions, as well as to treaty pledges to Spain, England was unprepared, even in her own interest, to welcome immediately the seceded Spanish colonies into the brotherhood of sovereign states. An unwillingness to leap as far as her strength will permit is a characteristic of British foreign relations, yet in this particular instance, a leap too far might have proved a leap into the dark, as the strength of all combined Europe seemed to favor the reduction of Spanish-America in the cause of absolutism; such a political error might have isolated Great Britain. Canning was willing to go much further in this direction than had been his more temporizing predecessor, Lord Castlereagh. He protested vigorously against the proposed interference of Europe in America. He was willing that the new states should remain Spanish or be free, indeed it is said that he almost preferred them to return under a modified Spanish rule; but in order to satisfy the requirements of English commercial interests, they must, under no circumstances, pass

under other European sovereignty. "Neither justice, nor humanity, nor the interests of Europe or of America," he said to Polignac, "allow that the struggle . . . should be taken up afresh by other hands." Again, England was far in advance of continental Europe in the development of constitutional government; having progressed in her ideas favorable to popular suffrage, she too, it may reasonably be inferred, viewed with some disfavor the resubjugation of a people who had practically acquired their emancipation from the tyranny of absolute monarchy. Mr. Canning was, in no sense of the word, an enthusiastic admirer of the people of the United States. From his own writings, expressions are not wanting indicating an actual aversion for the keen, aggressive people across the Atlantic, but in the impending danger that threatened both, the one commercially, the other politically, he turned to the United States. He well knew that the people of the United States sympathized with the Spanish colonies in their struggles for freedom; indeed, they had already recognized several of them as sovereign states. He knew, also, that Americans regarded the advance of despotism and the action of the allies with no little suspicion and disfavor. Why not, therefore, utilize this sentiment to his own advantage? He began his reconnoitering tactics at once by seeking Mr. Rush, the American Minister, in London. On August 16, 1823, while discussing with Mr. Rush matters connected with the northwest boundary of the United States, the conversation drifted into Spanish affairs. Mr. Rush spoke of a recent statement made by Mr. Canning, to the effect that England disclaimed all intention of seizing any Spanish colony, and hoped France entertained no such purpose. Mr. Canning seized the occasion to sound the American Minister as to what he believed the Government of the United States would say to a project of going hand in hand with England in order to prevent France, or the other powers of the alliance, from interfering in Spanish America. Mr. Rush wrote: —

He did not think that concert of action would become necessary, fully believing that the simple fact of our two countries

being known to hold the same opinion would, by its moral effect, put down the intention on the part of France, if she entertained it. This belief was founded, he said, upon the large share of the Maritime power of the world which Great Britain and the United States shared between them, and the consequent influence which the knowledge of their common policy on the question involving such important maritime interests, present and future, could not fail to produce on the rest of the world.

Without instructions from home, Mr. Rush did not feel at liberty to commit himself upon so important a matter. Several days after this conversation, Mr. Canning wrote to Mr. Rush that his government had nothing to conceal on the subject. It conceived the recovery of the colonies by Spain to be hopeless, and the recognition of them to be a question only of time and circumstance. He asserted that the English Government was "by no means disposed to throw any impediment in the way of an arrangement between them and the mother country by amicable negotiations." England, he maintained, desired for herself no part of their territory, but he added, "it could not see any part of them transferred to any other power with indifference."

Such being England's views, urged Mr. Canning, why not, if the United States acceded, publish them to the world? "A proceeding of such a nature," he continued, "would be at once the most effectual and the least offensive mode of intimating the joint disapprobation of Great Britain and the United States of any projects which might be cherished by any European power, of a forcible enterprise for reducing the colonies to subjugation on the behalf or in the name of Spain; or of the acquisition of any part of them to itself by cession or by conquest." Mr. Canning supplemented his note by another a few days later, calling Mr. Rush's attention to the fact that additional reasons for haste had developed. France expected shortly to accomplish her military objects in Spain, and notice had been sent to England that when this was done "a proposal would be made for a Congress in Europe, or some other concert and consultation, specifically on the affairs of South America."

Mr. Rush still hesitated to answer, fearing to complicate the United States in the political broils of Europe, — a most undesirable step, he believed, for his country to take ; moreover, he felt certain that the President would sanction no such radical departure from the fundamental principles of American politics. He cautiously replied to the British Secretary that he could safely say the United States agreed with Mr. Canning in all he had said concerning the future status of the Spanish colonies. He concluded, however, with the following vigorous words : “ We should regard as unjust, and fruitful of highly disastrous consequences, any attempt on the part of any European power to take possession of them by conquest, by cession, or on any other ground or pretext.” Lack of instructions from Washington did not warrant him in joining with Mr. Canning in an open declaration to that effect. A little later, Mr. Rush wrote to Canning, that his government “ would regard as objectionable any interference whatever in the affairs of Spanish America, unsolicited by the late provinces themselves, and against their will. It would regard the convening of a Congress to deliberate upon their affairs as a measure uncalled-for, and indicative of a policy highly unfriendly to the tranquillity of the world. It could never look with insensibility upon such an exercise of European jurisdiction over communities now of right exempt from it, and entitled to regulate their own concerns unmolested from abroad.”

Mr. Canning continued to urge Mr. Rush to join him in an open declaration, because the congress of the powers would soon meet, and England was desirous of arming herself beforehand with an American declaration, in order that she might not enter the lists alone and single-handed against the designs of the allies. Mr. Rush still hesitated. Communication with the United States required many weeks, and by that time an answer from Washington would be of little avail. Again the British Secretary prodded Mr. Rush. “ They [United States] were the first power established on that continent, and now confessedly the leading power ; ” they were connected with South America by their geographic

position, and with Europe by their relations. Was it possible that they could with indifference see their fate determined by Europe? Had not a new epoch arrived in the relative position of the United States toward Europe, which Europe must acknowledge? Were the great political and commercial interests which hung upon the destiny of the new continent to be canvassed and adjusted on the Eastern Hemisphere without the coöperation or even knowledge of the United States? These were flattering suggestions to Mr. Rush; and finally moved by such representations he consented to rely upon his general power as a Minister Plenipotentiary, and to take the desired stand with Mr. Canning, provided England would first recognize the independence of the South American states. To this Canning would not agree, and the project of a joint American and English statement fell through.

Annoyed by his failure to secure the coöperation of the United States, Canning decided to proceed alone. Turning to France, he made known to the French Ambassador, Prince Polignac, England's determination to oppose the interference of the allied powers in Spain's behalf to subdue her colonies. To his surprise, no doubt, Polignac declared that France entertained no such intention, and, furthermore, that France fully agreed with England in that the South American states were, to all intents and purposes, free and should not be molested. Polignac further disclaimed any intention on the part of his government to seek any exclusive commercial advantage in Spanish America. To Canning these statements of Polignac were too extraordinary to be true; he distrusted the French diplomat, as the latter appears to have distrusted the Englishman, so Rush was not made acquainted by Canning with the results of the Polignac conferences in time to forward them to Washington before the end of the year (1823). As it was largely against France that the animus of the Monroe declaration was directed, it is not unlikely that had such a disclaimer from Polignac reached President Monroe before his message had been framed; its tone might have been considerably modified.

When Rush's despatches relating his interviews with Canning reached Washington in September (1823) the President was plunged into a sea of doubt and perplexity. He fully realized the importance of the question as he saw plainly the approach of the dreaded clash; it was the spirit of absolutism, angered and jealous, which was seeking to arrest the progress of democracy in the Western Hemisphere. To him the subjugation of the South American colonies by France, or by the combined forces of the Holy allies, pointed directly to the absorption of those colonies by the great powers and their forcible return to the sway of imperialism. It meant the hedging in of the United States by its natural enemies, and the possible overthrow of republican institutions at home. He was determined from the first to act, but in just what manner was the question. To unite with Great Britain in a joint declaration to the powers for the furtherance of any end whatever, would be to enter upon an entangling alliance; indeed, to subvert a sacred policy of his country. To issue a declaration such as the occasion called for would involve an interference in the affairs of foreign nations, and if issued alone by the United States it might avail nothing against the forces of combined Europe.

Jefferson was then in retirement at Monticello, removed from the cares and vexations of public life, but to this aged statesman, Monroe turned for advice. To Madison as well, also in retirement at his Virginia home, the President forwarded copies of the Rush-Canning correspondence, soliciting his counsel in this critical matter. The replies of these two men are valuable historical documents. That of Jefferson is as follows:—

MONTICELLO, October 24, 1823.

DEAR SIR,—The question presented by the letters you have sent me, is the most momentous which has ever been offered to my contemplation since that of Independence. That made us a nation, this sets our compass and points the course which we are to steer through the ocean of time opening on us. And never could we embark on it under circumstances more auspicious. Our first and fundamental maxim should be, never to entangle

ourselves in the broils of Europe.) Our second, never to suffer Europe to intermeddle with cis-Atlantic affairs. America, North and South, has a set of interests distinct from those of Europe, and peculiarly her own. She should therefore have a system of her own, separate and apart from that of Europe. While the last is laboring to become the domicil of despotism, our endeavor should surely be, to make our hemisphere that of freedom. One nation, most of all, could disturb us in this pursuit; she now offers to lead, aid, and accompany us in it. By acceding to her proposition, we detach her from the band of despots, bring her mighty weight into the scale of free government, and emancipate a continent at one stroke, which might otherwise linger long in doubt and difficulty. Great Britain is the nation which can do us the most harm of any one, or all on earth; and with her on our side we need not fear the whole world. With her then, we should most sedulously cherish a cordial friendship; and nothing would tend more to knit our affections than to be fighting once more, side by side, in the same cause. Not that I would purchase even her amity at the price of taking part in her wars. But the war in which the present proposition might engage us, should that be its consequence, is not her war, but ours. Its object is to introduce and establish the American system, of keeping out of our land all foreign powers, of never permitting those of Europe to intermeddle with the affairs of our nations. It is to maintain our own principle, not to depart from it. And if, to facilitate this, we can effect a division in the body of the European powers, and draw over to our side its most powerful member, surely we should do it. But I am clearly of Mr. Canning's opinion, that it will prevent instead of provoke war. With Great Britain withdrawn from their scale and shifted into that of our two continents, all Europe combined would not undertake such a war. For how would they propose to get at either enemy without superior fleets? Nor is the occasion to be slighted which this proposition offers, of declaring our protest against the atrocious violations of the rights of nations, by the interference of any one in the internal affairs of another, so flagitiously begun by Bonaparte, and now continued by the equally lawless Alliance, calling itself Holy. . . .

I could honestly, therefore, join in the declaration proposed, that we aim not at the acquisition of any of those possessions, that we will not stand in the way of any amicable arrangement between them and the mother country; but that we will oppose, with all our means, the forcible interposition of any other power, as auxiliary, stipendiary, or under any other form of pretext, and

most especially, their transfer to any power by conquest, cession, or acquisition in any other way. I should think it, therefore, advisable, that the Executive should encourage the British government to a continuance in the dispositions expressed in these letters, by an assurance of his concurrence with them as far as his authority goes; and that as it may lead to war, the declaration of which requires an act of Congress, the case shall be laid before them for consideration at their first meeting, and under the reasonable aspect in which it is seen by himself.

Madison's reply is no less interesting, and merits free quotation: —

Oct. 30, 1823.

DEAR SIR, — I have just received from Mr. Jefferson your letter to him, with the correspondence between Mr. Canning and Mr. Rush, sent for his and my perusal, and our opinions on the subject of it.

From the disclosures of Mr. Canning it appears, as was otherwise to be inferred, that the success of France against Spain would be followed by an attempt of the Holy allies to reduce the revolutionized colonies of the latter to their former dependence.

The professions we have made to these neighbors, our sympathies with their liberties and independence, the deep interest we have in the most friendly relations with them, and the consequences threatened by a command of their resources by the Great Powers, confederated against the rights and reforms of which we have given so conspicuous and persuasive an example, all unite in calling for our efforts to defeat the meditated crusade. It is particularly fortunate that the policy of Great Britain, though guided by calculations different from ours, has presented a coöperation for an object the same with ours. With that coöperation we have nothing to fear from the rest of Europe, and with it the best assurance of success to our laudable views. There ought not, therefore, to be any backwardness, I think, in meeting her in the way she has proposed; keeping in view, of course, the spirit and forms of the Constitution in every step taken in the road to war, which must be the last step if those short of war should be without avail.

It cannot be doubted that Mr. Canning's proposal, though made with the air of *consultation* as well as concert, was founded on a pre-determination to take the course marked out, whatever might be the reception given here to his invitation. But this consideration ought not to divert us from what is just and proper in itself.

Our coöperation is due to ourselves and to the world; and whilst it must ensure success in the event of an appeal to force, it doubles the chance of success without that appeal. . . .

In November (1823) the cabinet meetings began, and it may well be imagined that the principal topic of interest was the subject of the Holy Alliance and its suspected Western schemes; just how to express the defiance of the United States in the most judicious and practical manner, brought forth considerable divergence of opinion.

In the cabinet were John Quincy Adams, Secretary of State, Calhoun, Southard and Wirt. Mr. Calhoun advised following the advice of Jefferson, and giving to Mr. Rush discretionary powers to join with Great Britain in the declaration referred to. To this proposition Adams vigorously objected, in which opinion he was supported by the President, who, according to Mr. Adams' own diary, "was averse to any course which should have the appearance of taking a position subordinate to that of Great Britain." Mr. Monroe then suggested the idea of sending a special representative to the proposed congress of the allies to protest against all interference in South America, but this plan found no favor in the cabinet. On November 13, Adams entered in his diary:—

I find him yet altogether unsettled in his own mind as to the answer to be given to Mr. Canning's proposals, and alarmed far beyond anything that I could have conceived possible, with the fear that the Holy Alliance are about to restore immediately all South America to Spain. Calhoun stimulates the panic, and the news that Cadiz has surrendered to the French has so affected the President that he appeared entirely to despair of the cause of South America. . . .

To Addington, the British Minister in Washington, who pressed him for an answer to Canning's proposition, the Secretary said that the measure "was of such magnitude, such paramount consequence as involving the whole future policy of the United States . . . that the President was

anxious to give it the most deliberate consideration, and to take the sense of his whole cabinet upon it."

News suddenly arrived announcing the success of the French troops in Spain, of the fall of Cadiz, and the restoration of Ferdinand to absolute power, which, according to Adams' diary, thoroughly dejected the President, and caused widespread alarm throughout the country. The press viewed the situation somewhat hysterically, and popular feeling turned decidedly in favor of an English alliance. Adams held firmly to his original position that the United States should stand alone. He seemed to doubt Canning's sincerity; it perhaps appeared to him, who was more familiar than his colleagues with the methods of foreign diplomacy, that possibly Canning had, after all, by his cries of wolf, only been trying to frighten the United States into guaranteeing Cuba to Spain. Somewhat caustically he wrote in his diary: "I soon found the source of the President's despondency with regard to South American affairs. Calhoun is perfectly moon-struck by the surrender of Cadiz, and says 'the Holy allies, with ten thousand men, will restore all Mexico and all South America to the Spanish dominion.'"

Calhoun's proposition to instruct Mr. Rush to act in conjunction with Mr. Canning "in case of any sudden emergency of danger," was accepted by the President, though in opposition to the views of the Secretary of State. A draft of instructions was actually drawn up by the unwilling Adams, and was brought before the cabinet, much amended and interlined, for examination. Mr. Adams then insisted that if the United States must join Great Britain in such a movement, or in such a declaration of principles, the English Government should first acknowledge the independence of the South American states. The United States, he insisted, having acknowledged the independence of the Spanish-American states, "had a right to object to the interference of foreign powers in the affairs of those territories. To Great Britain, it might be objected that although possessing the option, she had no distinct right so to do. She regarded those territories as still dependencies of Spain, and in that

character she might allow, not only Spain, but *pro re nata* other powers, as allies of Spain, to interfere in reducing them by force, to obedience. Such a proceeding was impossible to the United States, from the mere fact of their recognition of the independence of the territories in question."

While discussion was proceeding in the cabinet over the form of instructions to be sent to Mr. Rush, a new phase of the question suddenly developed and called for consideration.

Baron Tuyll, the Russian Minister in Washington, read to Mr. Adams certain despatches he had received from Count Nesselrode. One of these was the exhibition of "passionate exultation at the counter revolution in Portugal and the impending success of the French army in Spain; an 'Io Triomphe' over the fallen cause of [popular] revolution, with sturdy promises of determination to keep it down. . . ." Mr. Adams believed the expression of these sentiments called for some sort of answer from the United States. "My purpose would be," declared Mr. Adams "in a moderate and conciliatory manner, but with a firm and determined spirit, to declare our dissent from the principles avowed in those communications, to assert those upon which our own government is founded, and while disclaiming all intention of attempting to propagate them by force, and all interference in the political affairs of Europe, to declare our expectation and hope that the European powers will equally abstain from the attempt to spread their principles in the American hemisphere, or to subjugate by force any part of these continents to their will." The President agreed with Mr. Adams in this respect, and at the next meeting of the cabinet he read, from a rough draft, the annual message to Congress he was preparing to deliver to that body on December 2. In this draft he had inserted not only his views upon the matters in question, but had also added some lines covertly intended for the Czar as a reply to Nesselrode's despatches to Baron Tuyll. Of this preliminary draft of the message Mr. Adams wrote in his diary under date of November 21, 1823: —

. . . Its introduction was in a tone of deep solemnity and of high alarm, intimating that this country is menaced by imminent and formidable dangers, such as would probably soon call for their most vigorous energies and the closest union. It then proceeded to speak of the foreign affairs, chiefly according to the sketch I had given him some days since, but with occasional variations. It then alluded to the recent events in Spain and Portugal, speaking in terms of the most pointed reprobation of the late invasion of Spain by France. It also contained a broad acknowledgment of the Greeks as an independent nation, and a recommendation to Congress to make an appropriation for sending a minister to them.

The members of the cabinet generally accepted the draft of the message with approval, but Adams objected to its whole tone as one of combined fear and aggression. It appeared to him to be the cry of an alarmist; it breathed an air of direct defiance which he believed to be wholly unnecessary; and at last it might precipitate a war,—the most unfortunate of possibilities. Adams desired to “take the ground of earnest remonstrance against the interference of the European powers by force with South America, but to disclaim all interference on our part with Europe; to make an American cause, and adhere inflexibly to that.” He wished particularly to avoid mention of the allies, or reference in hostile manner to any nation, his idea being solely the enunciation of a principle.

Notwithstanding Adams’ desire to deal circumspectly with personalities in public utterances, he still clung to the idea of issuing a manifesto of some sort to Baron Tnyll in answer to the Russian despatches. A comment in his diary upon a paper he had prepared for this purpose and had introduced in the cabinet meeting of November 25, is a valuable extract as showing not only his own views at the moment, but also to what extent he was the real author of the “declaration” in the President’s message to appear later.

“The paper itself,” he wrote, “was drawn to correspond exactly with a paragraph of the President’s message which he had read me yesterday, and which was entirely conformable to the

system of policy which I have earnestly recommended for this emergency. It was also intended as a firm, spirited, and yet conciliatory answer to all the communications lately received from the Russian Government, and at the same time, an unequivocal answer to the proposals made by Canning to Rush. It was meant also to be eventually an exposition of the principles of this government, and a brief development of its political system as henceforth to be maintained: essentially republican — maintaining its own independence, and respecting that of others; essentially pacific — studiously avoiding all involvements in the combinations of European politics, cultivating peace and friendship with the most absolute monarchies, highly appreciating and anxiously desirous of retaining that of the Emperor Alexander, but declaring that, having recognized the independence of the South American States, we could not see with indifference any attempt by European powers by forcible interposition either to restore the Spanish dominion on the American continents, or to introduce monarchical principles into those countries, or to transfer any portion of the ancient or present American possessions of Spain to any other European power.”

Only a week before the message of the President was due, the question of how to proceed against the threatened dangers from Europe was by no means settled; indeed, Adams seems to have had the only clear conception of the true necessities of the occasion. The form of instructions to Rush was not determined upon; the President's draft of message met with the vigorous opposition of the Secretary of State, and Adams' suggestion of a manifesto to Baron Tnyll found no supporters in the cabinet. Monroe considered Adams' sentiments in his proposed letter to Baron Tnyll to be too vigorous, and to Europe, too offensively republican; they might even estrange Great Britain, whose friendship in the impending crisis was absolutely essential. Calhoun also doubted the necessity or even the advisability of publishing “so ostentatious a display of republican principles.” Adams defended his manifesto by urging that “as the Holy allies had come to edify and instruct us with their principles, it was due in candor to them and in justice to ourselves, to return the compliment.” Again Calhoun averred that as the President's message, which covered this very subject, was

directed to the people of the United States and not to any foreign sovereign, it would be less likely to give offence. Southard agreed with Mr. Adams. "If the Czar and the Holy allies choose to sing to us the praises of despotism," he said, "they cannot take umbrage at our chorus for free institutions, even though directed to them."

Up to this time (about a week before the convening of Congress), Mr. Wirt, the Attorney General, who had been absent from these important cabinet meetings, now appeared upon the scene, and with a mind uninfluenced by the former spirited discussions, he proceeded to examine Mr. Adams' draft of manifesto from a purely common-sense point of view. Might it not, after all, seem to be mere bombast, for if the allies should actually begin hostile operations against South America, would the United States back up Mr. Adams' declaration with men and guns? To this Adams could only reply, "It is, and has been to me, a fearful question." Upon that point he said in his diary:—

My paper and the paragraph would certainly commit us as far as the Executive constitutionally could act on this point; and if we take this course, I should wish that a joint resolution of the two Houses of Congress should be proposed and adopted to the same purport.

Five days before the annual message became due, the situation in the cabinet was still one of confusion. Adams insisted upon pouring hot shot into the Czar by a letter to Tuyll containing a most thorough indorsement of republican institutions. To this the President still demurred, fearing that England might take offence at the rabid republicanism of the document, and withdraw from her position of harmony with the United States. Monroe was conservative, and Adams extreme; but on the other hand, the President desired in his message to score France and the Holy allies both for their interference in Spain and their contemplated interference in America. He wished to recognize the independence of Greece, to all of which Adams objected, insisting that he should "disclaim all intention of interfering with these, and

make the stand altogether for an American cause; and that at the same time, the answer to be given to the Russian communications should be used as the means of answering also the proposals of Mr. George Canning, and of assuming the attitude to be maintained by the United States with reference to the designs of the Holy Alliance upon South America." At this point their relative positions were reversed, the President assuming a bold and defiant attitude, and his Secretary counselling him to follow a more conservative course. Mr. Wirt did not believe that the people of the United States sympathized with the South Americans sufficiently to fight for their cause, in which case he questioned the propriety of issuing any menace whatever,—at least he thought the temper of our own people should first be ascertained by consulting Congress. Calhoun supported the President; the people would fight, he believed, and should fight rather than permit the Spanish colonies to be reduced by the allies; but he objected to Adams' plan of manifesto to Baron Tuyll, to which, on the other hand, Southard and, strangely enough, the cautious Wirt gave full approval.

All of this wrangling seems now to have been quite needless, for it really made but little difference whether the principles the administration wished to proclaim to the world should find expression in a letter to the Russian Ambassador or should be embodied in the President's message to Congress. Almost at the very last moment, President Monroe seems to have adopted the changes in the draft of message so urgently insisted upon by Mr. Adams. The message, as finally prepared, expressed sympathy with the constitutional manifestos of Spain and Greece; but it disclaimed all intention of interfering abroad, and refrained from censuring either France or the Holy allies.

The protest against interference on the part of the allies in South America constitutes, however, only one part of the "Monroe Doctrine.") In the same message, though in a preceding part of the document, occurs another exposition of a foreign policy, which the President took occasion to

propose as one worthy of future recognition by the United States. This related to the attitude which, for its own safety, the United States should thereafter assume toward all foreign schemes of colonization upon the American continents. It was a policy embodying a principle so thoroughly in harmony with the general view announced by the President in reference to foreign aggressions in the western world, that it has been accepted as a part of the "Monroe Doctrine."

In the early part of the century, an American exploring expedition had descended the Columbia River to its mouth, and visiting the coastal regions of Oregon, had established over a very considerable, though ill-defined region of territory, an American claim of title. Spain also had territorial claims along the Pacific coast, as far north as Vancouver Island, which, however, she yielded to the United States (north of 42°) by treaty of 1819. English claims in the northwest were exceedingly indefinite, but all cause of friction between England and the United States, arising from disputed boundary lines on the Pacific coast, was removed by the agreement of 1818, leaving for a term of years the territory claimed by both parties free and open to the subjects of each. Far to the north and west, an immense and vaguely bounded territory, belonged to Russia. Even in those early days, some trade relations existed between citizens of the United States and the native Alaskan Indians. Misunderstandings arose, and Russia took occasion in a correspondence which followed, to make known her claims along the Pacific coast of North America, from Bering Straits to the mouth of the Columbia River. In 1816, a Russian chartered company made settlements and established a regular trading post near San Francisco. This advance of the Russians, far to the south, caused some dissatisfaction in Washington; but so doubtful were all territorial titles along the Pacific coast in those early days, that no positive stand was made against this Russian advance. In 1821, however, Alexander, Emperor of Russia, issued an ukase, in which he announced his claim to the northwest coast of America, down to the 51st

degree of latitude, and forbade the approach within one hundred miles of his shores by any foreign vessel. This extraordinary assumption of marine jurisdiction met with instant protests from both Washington and London. Mr. Adams bestirred himself to gather arguments to disprove this exaggerated claim of Russia, which Mr. Poletica, the Russian Minister in Washington, sought to defend upon the grounds "of first discovery, first occupation, and upon that which results from a peaceable and uncontested possession of more than half a century." Mr. Poletica was succeeded by Baron Tuyll, who brought the discussion to a close by asking that the matter be settled in St. Petersburg by negotiation with Mr. Middleton, the American Minister at that capital. Mr. Adams, in July, 1823, told Baron Tuyll "that we should contest the right of Russia to any territorial establishment on this continent, and that we should assume distinctly the principle that American continents are no longer subjects for any European colonial establishments." He then instructed Mr. Middleton that : —

There can, perhaps, be no better time for saying frankly and explicitly, to the Russian Government, that the future peace of the world, and the interest of Russia herself, cannot be promoted by Russian settlements upon any part of the American continent. With the exception of the British establishments north of the United States, the remainder of both the American continents must henceforth be left to the management of American hands. It cannot possibly be the purpose of Russia to form extensive colonial establishments in America. The new American republics will be as impatient of a Russian neighbor as the United States; and the claim of Russia to territorial possession, extending to the 51st parallel of north latitude, is equally incompatible with British pretensions.

The very same day he wrote to Mr. Rush, acquainting him with the latest phases of the northwest-territory dispute. He said:—

A necessary consequence of this state of things [independence of the Spanish American colonies] will be, that the American continents, henceforth, will no longer be subjects of colonization.

Occupied by civilized independent nations, they will be accessible to Europeans and to each other on that footing alone, and the Pacific Ocean in every part of it will remain open to the navigation of all nations in like manner with the Atlantic.

Incidental to the condition of national independence and sovereignty, the rights of anterior navigation of their rivers will belong to each of the American nations within its own territories.

The application of colonial principles of exclusion, therefore, cannot be admitted by the United States as lawful upon any part of the northwest coast of America, or as belonging to any European nation.

Fortunately the dispute was amicably settled by the negotiations in St. Petersburg. In the treaty of 1824, Russia accepted the parallel of $54^{\circ} 40'$ as the southern limit of her American territory.

The statement of Mr. Adams, that the American continents would no longer be subject to colonization, was seized upon by President Monroe. It dovetailed perfectly with the policy he and his cabinet had determined upon as a check against the Holy Alliance.

The words of the annual message of December 2, 1823, which constitute the "Monroe Doctrine" are as follows, — those aimed at Russia coming first : —

At the proposal of the Russian Imperial Government, made through the minister of the Emperor residing here, a full power and instructions have been transmitted to the minister of the United States at St. Petersburg to arrange by amicable negotiation the respective rights and interests of the two nations on the northwest coast of this continent. A similar proposal had been made by His Imperial Majesty to the Government of Great Britain, which has likewise been acceded to. The Government of the United States has been desirous by this friendly proceeding of manifesting the great value which they have invariably attached to the friendship of the Emperor and their solicitude to cultivate the best understanding with his Government. In the discussions to which this interest has given rise and in the arrangements by which they may terminate *the occasion has been judged proper for asserting, as a principle in which the rights and interests of the United States are involved, that the American continents, by the free and independent condition which they have assumed and*

*maintain, are henceforth not to be considered as subjects for future colonization by any European powers.*¹

After a digression upon other topics, the President turns to the subject of the threatened interference in South America by the allied powers of Europe:—

“It was stated at the commencement of the last session that a great effort was then making in Spain and Portugal to improve the condition of the people of those countries, and that it appeared to be conducted with extraordinary moderation. It need scarcely be remarked that the result has been so far very different from what was then anticipated. Of events in that quarter of the globe, with which we have so much intercourse and from which we derive our origin, we have always been anxious and interested spectators. The citizens of the United States cherish sentiments the most friendly in favor of the liberty and happiness of their fellow-men on that side of the Atlantic. In the wars of the European powers in matters relating to themselves we have never taken any part, nor does it comport with our policy so to do. It is only when our rights are invaded or seriously menaced that we resent injuries or make preparation for our defence. With the movements in this hemisphere we are of necessity more immediately connected, and by causes which must be obvious to all enlightened and impartial observers. The political system of the allied powers is essentially different in this respect from that of America. This difference proceeds from that which exists in their respective Governments; and to the defence of our own, which has been achieved by the loss of so much blood and treasure, and matured by the wisdom of their most enlightened citizens, and under which we have enjoyed unexampled felicity, this whole nation is devoted. *We owe it therefore, to candor and to the amicable relations existing between the United States and those powers to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as danger-*

¹ Italics not in the message.

ous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered and shall not interfere. But with the Governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power *in any other light than as the manifestation of an unfriendly disposition toward the United States.* In the war between those new Governments and Spain we declared our neutrality at the time of their recognition, and to this we have adhered, and shall continue to adhere, provided no change shall occur which, in the judgment of the competent authorities of this Government, shall make a corresponding change on the part of the United States indispensable to their security.

“The late events in Spain and Portugal show that Europe is still unsettled. Of this important fact no stronger proof can be adduced than that the Allied Powers should have thought it proper, on any principle satisfactory to themselves, to have interposed by force in the internal concerns of Spain. To what extent such interposition may be carried, on the same principle, is a question in which all independent powers whose governments differ from theirs are interested, even those most remote, and surely none more so than the United States. Our policy in regard to Europe, which was adopted at an early stage of the wars which have so long agitated that quarter of the globe, nevertheless remains the same, which is, not to interfere in the internal concerns of any of its Powers; to consider the government *de facto* as the legitimate government for us; to cultivate friendly relations with it, and to preserve those relations by a frank, firm, and manly policy, meeting, in all instances, the just claims of every power, submitting to injuries from none. But in regard to these continents circumstances are eminently and conspicuously different. It is impossible that the allied powers should extend their political system to any portion of either continent without endangering our peace and happiness; nor

can any one believe that our southern brethren, if left to themselves, would adopt it of their own accord. It is equally impossible, therefore, that we should behold such interposition in any form with indifference. If we look to the comparative strength and resources of Spain and those new Governments, and their distance from each other, it must be obvious that she can never subdue them. It is still the true policy of the United States to leave the parties to themselves, in the hope that other powers will pursue the same course.”¹

V

Reviewing the course of events that culminated in the declarations of President Monroe in his annual message to Congress of 1823, several facts are to be noted : —

1. The United States by adopting a republican form of government brought upon itself the enmity of absolutism.

2. Physical weakness obliged it to follow a policy of political isolation. Intermeddling in the affairs of others was likely to invite troubles, and the young republic could not endure the strain of useless wars. By frequent expressions of its statesmen the nation substantially pledged itself to abstain from interference with the concerns of Europe.

3. With this determination to hold aloof from the political affairs of the old world, a dominant feeling prevailed, that the old world should not interfere in the affairs of the new.

4. It became apparent in the summer of 1823 that certain powers of Europe, allied together for the purpose of suppressing rebellion and perpetuating the theories of divine right of kings, were about to extend the scope of their operations to South America, by aiding Spain in crushing rebellion in her colonies.

5. George Canning, the English Minister for Foreign Affairs, was embarrassed as to the proper course to pursue in relation to the South American colonies of Spain. British commercial interests demanded the recognition of the new

¹ Italics not in message.

states, while other considerations opposed such a course. Finding a solution of the difficulty in American coöperation against the Holy Alliance, he sought to enlist the United States in a plan he had devised to oppose the scheme of the allies.

6. Interference on the part of the allies in South and Central America, it was feared, would lead to territorial grants to them, followed, in all probability, by the establishment of monarchical rule, and eventually the overthrow of republican institutions in all the new world, including the United States.

7. Previous to 1823, Russia had by proclamation and actual settlement sought to acquire title to portions of the Pacific coast of North America, claimed by both England and the United States. Pending negotiations for settlement of these difficulties, the President took occasion to express in his message of 1823, his belief that thenceforth the United States could permit no European colonization in North or South America.

The Monroe Doctrine includes several distinct statements, as follows: —

(a) The American continents are henceforth not to be considered as subjects for future colonization by any European powers.

(b) The political system of the allied powers is essentially and radically different from that of America, and, being devoted to the defence of our own system, we owe it in candor to those powers to declare that we should “consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety.”

(c) Having acknowledged the independence of certain governments (in America), we could not view interposition on the part of any European power, for the purpose of oppressing or otherwise controlling them, in any other light than as a manifestation of unfriendly disposition toward the United States.

(d) The foreign policy of the United States would remain the same; that is, not to interfere in the internal affairs of any European power.

(e) Circumstances being radically different on these continents, it is impossible that the allied powers should extend their political systems into either of them without endangering our peace and happiness; therefore it is impossible that we should behold such interposition with indifference.

Barring the first statement in regard to colonization, which expressly lays down a principle for future guidance, the declaration was a defensive measure, directed against the threatened interference of the European powers constituting the Holy Alliance. There has since been endless discussion as to whether the President intended by these words to establish a principle that should ever afterward be followed by the people of the United States. Whether the President intended this or not, the principles enunciated at that time have frequently been appealed to since, and the "doctrine" itself has been accepted as the corner-stone of America's foreign policy. There can be little doubt, however, that President Monroe had no intention of proclaiming to the world an inviolable principle for all time to come. Being confronted by a definite threat, he met it by a definite statement. He mentions in his message the particular reasons for his opposition to the "Allied Powers," and refers in particular to "these powers" constituting the Holy Alliance, as the object of his attack, because they represent, and seek to perpetuate, a system of government from the evil influences of which we had escaped and the revival of which we regarded with abhorrence.

Monroe's biographer, Daniel C. Gilman, says:—

It appears to me probable that Monroe had but little conception of the lasting effect which his words would produce. . . . It was because he pronounced not only the opinion then prevalent, but a tradition of other days, which had been gradually expanded, that his words carried with them the sanction of public law.

The message was received in the United States with feelings of deepest satisfaction. The danger had been squarely met, and the people were relieved in the knowledge that the President could be depended upon to act properly should the anticipated crisis occur. The spirit of the doctrine had been

struggling for expression for a number of years, and, in voicing it, the President touched a chord which vibrated in every American heart. From all political parties the administration received the warmest commendation, while a most friendly feeling made itself apparent throughout the United States toward England, which had now become a silent political partner. In England that portion of the message which related to interference in America on the part of the allied powers of Europe was enthusiastically received, and the English press was fulsome in its praise of President Monroe. The British Government felt relieved of a burden by the positive attitude of the United States. The message had come at a most opportune moment; the allies were pressing Great Britain to meet them in convention at Paris, with a view of settling the Spanish-American question. Mr. Canning, though hesitating to isolate his country from the rest of Europe, knew that the proposed settlement would be unsatisfactory to England. Mr. Monroe's message relieved the situation and settled the matter in just the way Great Britain desired. Canning afterward boasted, "I called the New World into existence to redress the balance of the Old."

The other part of the message, relating to colonization, was not so acceptable to Great Britain. There being at that time much uncertainty as to the extent and ownership of unoccupied land in the great Northwest, Canning maintained that England "could not acknowledge the right of any power to proclaim such a principle, much less to bind other countries to the observance of it. If we were to be repelled from the shores of America, it would not matter to us whether that repulsion were effected by the Ukase of Russia, excluding us from the sea, or by the new doctrine of the President, prohibiting us from the land. But we cannot yield obedience to either." The declaration was "very extraordinary"; one which His Majesty's Government was "prepared to combat in the most unequivocal manner." The right of colonization was one that, as heretofore, may be exercised "without affording the slightest umbrage to the United States."

The powers of Continental Europe were surprised and indignant; Monroe was a dictator of the worst character, while the United States was an upstart nation, that maintained unwarrantable pretensions, and sought to establish wholly inadmissible principles in contempt of the civilized nations of the world. The declaration of this presumptuous people should be resisted by all powers possessing interests in the Western Hemisphere. But just back of the outstretched wings of the noisy American eagle, France and Russia believed they detected the British lion. If England had, after all, joined the allies in their schemes, it is much to be doubted whether the President's message of 1823 would have seriously embarrassed them in the ultimate perfection of their Spanish American plans; but the realization that Great Britain, with her powerful navy, endorsed, in the main, the sentiments of President Monroe, cast a gloom over the propagandists of divine right, and the great South American project was abandoned.

Although the Colombian Congress resolved that the doctrine of the North American President was "an act eminently just and worthy of the classic land of liberty," the message does not seem to have been welcomed with loud acclaim in South America. Events following soon after convinced the people of Spanish America — suspicious by nature, and at heart distrustful of the Anglo-Saxon — that the United States did not intend to uphold the doctrine, and that if it were meant as a promise of protection to them, it was false.

Soon after the reading of the President's annual message, Henry Clay, Speaker of the House of Representatives, caused to be introduced the following resolution: —

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the people of these states would not see, without serious inquietude, any forcible intervention by the allied Powers of Europe, in behalf of Spain, to reduce to their former subjection those parts of the continent of America which have proclaimed and established for themselves, respectively, independent governments, and which have been solemnly recognized by the United States.

This attempt to place the seal of Congressional approval upon the Monroe Doctrine, and give it thereby a more authoritative character, failed in less than two months after its enunciation by the executive. Several reasons have been assigned for this failure; one is, that Congress considered the alleged threats of the allies as empty vaporings, unworthy of notice; another is, that members of Congress, believing the danger to be past, were unwilling, in the absence of clear evidence of hostile intentions from abroad, to lay down a principle so wide and sweeping in its character, and one that might possibly be regarded by friendly nations as offensive. Still another reason is advanced why Mr. Clay's resolution was consigned to the table. Mr. Clay was well known to be a candidate for the presidency. His strength was great throughout the South and the West, and his influence as Speaker in the House was a powerful one. John Quincy Adams also was looking in the same direction as Mr. Clay; General Jackson was a possible candidate, and the same may be said of Calhoun. The "Monroe Doctrine" carried within it the elements of unbounded popularity; its champion in Congress might become a political hero. The opponents of Clay therefore combined against him, and he found himself in the awkward attitude of fathering a measure which was doomed in advance. He yielded to necessity, and consented to the shelving of his resolution.

Mr. Poinsett of South Carolina also moved a similar resolution, which met the same fate, but political jealousy can hardly be charged for the failure of Mr. Poinsett's motion.

In his last annual message to Congress, the following year (December 7, 1824), President Monroe again took occasion to reaffirm the policy announced in his previous message.

. . . Separated as we are from Europe by the great Atlantic Ocean, we can have no concern in the wars of the European Governments nor in the causes which produce them. The balance of power between them, into whichever scale it may turn in its various vibrations, cannot affect us. It is the interest of the United States to preserve the most friendly relations with every power and on conditions fair, equal, and applicable to all. But

in regard to our neighbors our situation is different. It is impossible for the European governments to interfere in their concerns, especially in those alluded to, which are vital, without affecting us; indeed, the motive which might induce such interference in the present state of the war between the parties, if a war it may be called, would appear to be equally applicable to us. It is gratifying to know that some of the powers with whom we enjoy a very friendly intercourse, and to whom these views have been communicated, have appeared to acquiesce in them. . . .

An occasion was about to be presented to the United States Government which would indicate the extent to which the country was willing to go in pledging its material support to the Monroe Doctrine. In the negotiations and debates relative to an invitation from the South American states to send delegates to a general Congress of the Americas, every shade of sentiment touching the Monroe Doctrine is found. So widely divergent were opinions in Congress upon this subject, that the doctrine, after running the gantlet of the Senate and House, emerged sadly disfigured. But in these debates, as with Clay's resolution, a series of political considerations became involved. The reluctance of Congress on this occasion to endorse the policy was, after all, scarcely a test of popular sentiment on the subject.

VI. PANAMA CONGRESS

Simon Bolivar was the Washington of South America. It was his voice that stirred the people to patriotic ardor; it was his martial skill that brought them victory, and won for them the prizes of liberty. His statue adorns the public squares of South American cities; his memory is revered from Panama to Buenos Ayres; he is declared to be the hero, the liberator of South America. At his instance, the states of Colombia in 1822 (then New Granada) began making treaties of alliance, offensive and defensive, with other South American states, whose independence from Spain had been practically won. In that and the following year, the

various independent states of South America formed a federation, bound together by the closest ties of friendship and common interest.

The central object of this confederation was to maintain independence by mutual aid and support, and to shield themselves against all harmful foreign influence. Like their North American neighbor, they had watched with considerable apprehension the threatened movement of the European allies to aid Spain in their resubjugation, and they recognized the necessity of standing firmly together. It was therefore agreed among them that "a general assembly of the American states shall be convened," for the purpose "of cementing . . . intimate relations," and Panama was suggested as a convenient meeting place. There seems to have been no original intention on the part of these "formerly Spanish" provinces to ask the United States to coöperate with them when they made their treaties of alliance, but the publication of President Monroe's message, of December, 1823, with its encouraging words for all newly created republics in the Western Hemisphere, seemed clearly to entitle the United States to a voice in their proposed Congress, should such a desire manifest itself at Washington. In the spring of 1825, the ministers of Colombia and Mexico, Messrs. Salazar and Obregon, cautiously approached the Secretary of State with a proposition from their respective governments, to the effect that, should the United States desire to participate, her delegates would find welcome at the Congress of the Americas, soon to convene at Panama. This invitation came immediately after the inauguration of President Adams (March, 1825). The President was known to be a hearty supporter of the principles of the Monroe Doctrine; he had been Secretary of State under Monroe, and had enjoyed, as such, the full confidence of the President during the preparation of his famous message. The Secretary of State was Henry Clay, and he had always been the champion in Congress of the South American states; indeed, some of his greatest speeches had been made in their cause. It was then reasonable to suppose that the administration would be favorable

to this plan of a general Congress. Knowing now that Adams, to a very large extent, was the real author of the Monroe Doctrine, one looks with considerable interest to the reply of the President to Messrs. Salazar and Obregon, because it is, from the highest source, an official and authoritative interpretation of the Monroe Doctrine. During the cabinet discussions of 1823, when the phrasing of that portion of the President's message relating to foreign affairs was under discussion, and Mr. Adams was urging the acceptance of his own copy, Mr. Wirt, the Attorney General, had asked him if he intended that the country should sustain, by force of arms, the somewhat aggressive policy he advocated. Mr. Adams could only then reply that that very question had given him no little concern, and he could not fully answer it. Now the same question was subtly asked by South America, — Would the United States confer with those who had joined in arms against European aggression, or perhaps, would she go a step further, and ally herself with them?

The President replied to the invitation of the two ministers through Mr. Clay, saying : —

That of course the United States could not make themselves a party to the existing war with Spain. The President believed such a Congress as was proposed might be highly useful in settling several important disputed questions of public law, and in arranging other matters of deep interest to the American continent, and strengthening the friendship and amicable intercourse between the American powers; but, before such a Congress assembled, certain conditions should be complied with, namely, the fixing of the subjects to be discussed at the Congress, the powers to be given to the commissioners, and the mode of organizing the Congress. . . .

A cautious reply. In the following November (1825), these same diplomatic agents of Colombia and Mexico reported to Mr. Clay, renewing their invitation upon this occasion, by formal notes from their home governments. They stated that while it was impossible to enumerate,

definitely, all the topics which would likely be presented for consideration, at the proposed Panama Congress, they could at least state that the discussions would include the manner of resistance to any attempted colonization by European powers on the American continent, and would include also the methods of resistance against possible interference in behalf of Spain against her former colonies. They would also discuss certain matters of international law, the abolition of the slave trade, and the independence of Haiti. Numerous other subjects were to be brought up, which more particularly concerned the South American states, and which the United States delegates would not be required or expected to discuss. It was particularly appropriate, as these representatives believed, for the American states to assemble in Congress, in order to consider their own interests—the nations of the Old World had long since been doing the same thing.

Mr. Clay thought that the ministers who extended this invitation to the United States had not even yet been sufficiently explicit as to all preliminary arrangements, to satisfy the President. The President wished to know exactly to what extent discussions at Panama might go, and just how far the United States might be placed under obligations by the resolutions adopted at the Congress. Both Adams and Clay felt the necessity of caution. It is far safer to declare a policy than to pledge oneself to abide by it. The President deliberated well; he believed that preliminary matters could be satisfactorily arranged later, so he dismissed the plenipotentiaries from Colombia and Mexico, with the statement that he would send commissioners to the Congress at Panama, if the Senate, which was shortly to convene, would consent.

In his annual message the following month (December 6, 1825), the President spoke of the proposed Panama Congress, and of the invitation to the United States to participate. "The invitation has been accepted," he wrote, "and ministers on the part of the United States will be commissioned to attend at those deliberations, and to take part in them, so far as may be compatible with that neutrality, from which it is

neither our intention, nor the desire of the other American states, that we should depart."

To the Colombian and Mexican ministers, the President had said he would send delegates to the Congress, "should the Senate of the United States . . . give their advice and consent"; to the Senate he simply said, "Ministers on the part of the United States *will be commissioned* to attend."

It was generally supposed to be the custom, as well as within the law, for the executive, in the creation of a new mission, simply to nominate envoys for the purpose, in which case, if the Senate did not agree with the President in the expediency of the suggested mission, it could exercise its authority by declining to confirm the nominations. The President's numerous political enemies in the Senate chose to avail themselves of this opportunity to attack the administration, and a bitter discussion of the constitutional right of the President to create the mission to Panama followed. On December 26 (1825), the President sent a special message to Congress on the subject, in which he remarked:—

Although this measure was deemed to be within the constitutional competency of the Executive, I have not thought proper to take any step in it before ascertaining that my opinion of its expediency will concur with that of both branches of the Legislature, first, by the decision of the Senate upon the nominations to be laid before them, and, secondly, by the sanction of both Houses to the appropriations, without which it cannot be carried into effect.

In defence of his policy he went on to say:—

It will be seen that the United States neither intend nor are expected to take part in any deliberations of a belligerent character; that the motive of their attendance is neither to contract alliances nor to engage in any undertaking or project importing hostility to any other nation.

The President further suggested that the South American nations "in the infancy of their independence" and through mere inexperience, had failed in some of their duties to other nations; that through the friendly means of a general Con-

gress, such mistakes against the United States might be corrected. In this document from the White House, a number of other reasons were urged — all seemingly sufficient to the President — that the United States should be represented in a general Congress of the Americas. The following significant words are noteworthy : —

An agreement between all the parties represented at the meeting that each will guard by its own means against the establishment of any future European colony within its borders may be found advisable. This was more than two years since announced by my predecessor to the world as a principle resulting from the emancipation of both the American continents. It may be so developed to the new southern nations that they will all feel it as an essential appendage to their independence.

The message closes with the nomination of Richard C. Anderson of Kentucky, and John Sargent of Pennsylvania, “to be envoys extraordinary and ministers plenipotentiary to the assembly of the American nations at Panama.”

A storm of disapproval met the reading of this message. In the Senate many expressed indignation at the President's assumption in nominating delegates to the Panama convention, without first having asked the consent of Congress, and were moved to expressions of greater wrath by the President's bold assertion of his constitutional right to send such envoys as he proposed. They railed against his “patronizing effrontery” in asking if Congress did really concur in his opinion of the expediency of the Panama mission, when he had already signified his intention to send delegates.

A bitter prejudice was engendered in both branches of Congress, against the President's project, quite aside and apart from the merits of the question itself.

There were also many in Congress who did not favor sending commissioners to Panama, for any reason whatever, as they distrusted the volatile character of the Spanish descendants; and as they doubted their capacity for self-government, they wished to have no political connections with them. It would be unwise, they said, to entangle ourselves

in their affairs, — we should be free to use our own discretion how and when to apply our recently advanced foreign policy. The United States, they urged, had nothing to gain and everything to lose by sending representatives to such a gathering.

In reviewing the long and particularly acrimonious debate aroused by the President's special message of December 26, one can hardly fail to be struck by the persistency and vindictiveness of the opposition. It seems indeed to have been out of all proportion to the importance of the issue. A hidden cause for so much venom may be found in the fact that the enemies of the measure were all from the South, and represented slave-holding constituents. (The Spanish-American states had abolished the institution of slavery, and were desirous of conferring with the United States at Panama, as intimated by Messrs. Salazar and Obregon, upon the propriety of abolishing the slave trade. Haiti was a negro republic, a nation of former slaves, and these southern members of Congress wished no official notice to be taken of them, and they resented the suggestion of conferring with them in any manner whatever. Randolph, Hayne, Van Buren, Buchanan, Polk, Calhoun and Burton, led an opposition that seemed invincible; "other states will do as they please," said Hayne, "but let us take the high ground that these questions belong to a class which the peace and safety of a large portion of our Union forbids us to discuss. Let our government direct all our ministers in South America and Mexico to protest against the independence of Haiti; but let us not go into council on the slave trade and Haiti." White, of Tennessee, exclaimed, "Let us cease to talk of slavery in this House, let us cease to negotiate upon any subject connected with it." Shadows of coming events were here cast before. Calhoun appointed the Committee on Foreign Affairs, and he selected its members with a purpose. The committee returned an unanimous report, to the effect that it was not expedient for the United States to be represented at Panama. The Senate then went a step farther, and passed a resolution censuring the President.

On the 15th of March (1826), Mr. Adams, still undismayed, sent a special message to the House of Representatives, in which he sought to demonstrate to that body the great importance of the Panama mission. The message is too redolent of the flowers of rhetoric, but it is a remarkably vigorous paper. Here and there occur expressions that throw considerable light upon Adams' conception of the extent and scope of the Monroe Doctrine, and which, coming from a joint author of the doctrine itself, are of great value: —

But objects of the highest importance, not only to the future welfare of the whole human race, but bearing directly upon the special interests of this Union, *will* engage the deliberations of the Congress of Panama whether we are represented there or not. Others, if we are represented, may be offered by our plenipotentiaries for consideration having in view both these great results — our own interests and the improvement of the condition of man upon earth. It may be that in the lapse of many centuries no other opportunity so favorable will be presented to the Government of the United States to subserve the benevolent purposes of Divine Providence; to dispense the promised blessings of the Redeemer of Mankind; to promote the prevalence in future ages of peace on earth and good will to man, as will now be placed in their power by participating in the deliberations of this congress. . . .

The late President of the United States, in his message to Congress of the 2d December, 1823, while announcing the negotiation then pending with Russia, relating to the northwest coast of this continent, observed that the occasion of the discussions to which that incident had given rise had been taken for asserting as a principle in which the rights and interests of the United States were involved that the American continents, by the free and independent condition which they had assumed and maintained, were thenceforward not to be considered as subjects for future colonization by any European power. The principle had first been assumed in that negotiation with Russia. It rested upon a course of reasoning equally simple and conclusive. With the exception of the existing European colonies, which it was in nowise intended to disturb, the two continents consisted of several sovereign and independent nations, whose territories covered their whole surface. By this their independent condition the United States enjoyed the right of commercial intercourse with every part of their possessions. To attempt the establishment of a colony in

those possessions would be to usurp to the exclusion of others a commercial intercourse which was the common possession of all. It could not be done without encroaching upon existing rights of the United States. The Government of Russia has never disputed these positions nor manifested the slightest dissatisfaction at their having been taken. Most of the new American Republics have declared their entire assent to them, and they now propose, among the subjects of consultation at Panama, to take into consideration the means of making effectual the assertion of that principle, as well as the means of resisting interference from abroad with the domestic concerns of the American Governments.

In alluding to these means it would obviously be premature at this time to anticipate that which is offered merely as matter for consultation, or to pronounce upon those measures which have been or may be suggested. The purpose of this Government is to concur in none which would import hostility to Europe or justly excite resentment in any of her States. Should it be deemed advisable to contract any conventional engagement on this topic, our views would extend no further than to a mutual pledge of the parties to the compact to *maintain the principle in application to its own territory*, and to permit no colonial lodgments or establishment of European jurisdiction upon its own soil; and with respect to the obtrusive interference from abroad—if its future character may be inferred from that which has been and perhaps still is exercised in more than one of the new States—a joint declaration of its character and exposure of it to the world may be probably all that the occasion would require. . . .

The condition of the islands of Cuba and Porto Rico is of deeper import and more immediate bearing upon the present interests and future prospects of our Union. The correspondence herewith transmitted will show how earnestly it has engaged the attention of this Government. The invasion of both those islands by the united forces of Mexico and Colombia is avowedly among the objects to be matured by the belligerent States at Panama. The convulsions to which, from the peculiar composition of their population, they would be liable in the event of such an invasion, and the danger therefrom resulting of their falling ultimately into the hands of some European power other than Spain, will not admit of our looking at the consequences to which the Congress at Panama may lead with indifference.

After giving assurances that the “assembly will be in its nature diplomatic and not legislative—merely consultative,”

Mr. Adams takes up the question of whether "the measure might not have a tendency to change the policy hitherto invariably pursued by the United States of avoiding all entangling alliances and all unnecessary foreign connections." "Mindful of the advice given by the father of our country," he declares that the counsel of Washington in that instance, "like all counsels of wisdom," was founded upon the fact that "Europe had a set of primary interests" all her own, and having but a remote relation to us, could only involve us in needless dispute, did we concern ourselves about them, but now, having "more than realized the anticipations of this admirable political legacy," by our growth and expansion we have arrived at a point when "America has a set of primary interests which have none or a remote relation to Europe; that the interference of Europe, therefore, in those concerns should be spontaneously withheld by her upon the same principles that we have never interfered with hers, and that if she should interfere, as she may, by measures which may have a great and dangerous recoil upon ourselves, we might be called in defence of our own altars and firesides to take an attitude which would cause our neutrality to be respected, and choose peace or war, as our interest, guided by justice, should counsel." Following the same idea he continues: —

To the question which may be asked, whether this meeting and the principles which may be adjusted and settled by it as rules of intercourse between the American nations may not give umbrage to the holy league of European powers or offence to Spain, it is deemed a sufficient answer that our attendance at Panama can give no *just cause* of umbrage or offence to either, and that the United States will stipulate nothing there which can give such cause. Here the right of inquiry into our purposes and measures must stop. The holy league of Europe itself was formed without inquiring of the United States whether it would or would not give umbrage to them. The fear of giving umbrage to the holy league of Europe was urged as a motive for denying to the American nations the acknowledgment of their independence. That it would be viewed by Spain as hostility to her, was not only urged, but directly declared by herself. The

Congress and Administration of that day consulted their rights and duties and not their fears. Fully determined to give no needless displeasure to any foreign power, the United States can estimate the probability of their giving it only by the right which any foreign state could have to take it from their measures. Neither the representation of the United States at Panama nor any measure to which their assent may be yielded there will give to the holy league or any of its members, nor to Spain, the right to take offence; for the rest the United States must still, as heretofore, take counsel from their duties rather than their fears.

Considering the lukewarmness with which Mr. Adams, as Secretary of State, had approached the subject of acknowledging the independence of the South American states, and considering his extreme caution and reserve as President in accepting the invitation to participate in the Panama Congress, one may wonder at the zeal displayed in his appeals to Congress to send representatives to the isthmus. He threw himself against the opposition of Congress with all his strength; he made the matter a personal one, as though the refusal of Congress to approve his scheme amounted to no less than an insult, and a personal affront to him. Whatever may have induced him to experience so decided a change of heart, suspicion will remain that a reason of some weight is to be found in the very obstacle itself,—the opposition of Congress. Thoroughly aroused by the thrusts of his political enemies, now considered his personal enemies, the President was moved to great earnestness as he penned this message. Seemingly in a spirit of inspiration he concluded the paper.

That the Congress at Panama will accomplish all, or even any, of the transcendent benefits to the human race which warmed the conceptions of its first proposer it were perhaps indulging too sanguine a forecast of events to promise. It is in its nature a measure speculative and experimental. The blessing of heaven may turn it to the account of human improvement; accidents unforeseen and mischances not to be anticipated may baffle all its high purposes and disappoint its fairest expectations. But the design is great, is benevolent, is humane.

It looks to the melioration of the condition of man. It is congenial with that spirit which prompted the declaration of our independence, which inspired the preamble of our first treaty with France, which dictated our first treaty with Prussia and the instructions under which it was negotiated, which filled the hearts and fired the souls of the immortal founders of our Revolution.

The long acrimonious debate in the Senate was closed March 14, 1826, by the appointment of Messrs. Anderson and Sargent as Ministers Plenipotentiary. The President had triumphed then in the Upper House, but at a great cost of ill feeling. The Lower House read his message, and in ten days the Committee on Foreign Relations placed before the House the resolution that, "it is expedient to appropriate the funds necessary to enable the President of the United States to send ministers to the Congress of Panama." The Ways and Means Committee immediately reported a bill making the necessary appropriations to defray the expenses connected with the mission.

The debate in the House was, perhaps, less bitter than it had been in the Senate, but the same opposition to the measure developed that had characterized the discussions of the Upper House. The Southern members arrayed themselves solidly against a project that, in their estimation, led the United States into forming embarrassing alliances with South Americans, — a project that might induce the United States to take action with foreign nations upon the slave trade, and that might disgrace their country by undue familiarity with the negro republic of Haiti. Already the Southern members sought to taboo any discussion touching upon slavery. Daniel Webster came to the President's rescue by warmly defending the message of March 15. He insisted that it was not the duty of the House, nor their constitutional right to decide "what shall be discussed by particular ministers, already appointed, when they shall meet the ministers of other powers," — that matter, he maintained, belonged to executive discretion and responsibility. It was for the House only to vote the necessary appropriation. He declared

that he looked “. . . on the message of December, 1823, as forming a bright page in our history. I will neither help to erase it or tear it out; nor shall it be by any act of mine blurred or blotted. It did honor to the sagacity of the government, and I will not diminish that honor. It elevated the hopes and gratified the patriotism of the people. Over those hopes I will not bring a mildew; nor will I put that gratified patriotism to shame.”

The force of Daniel Webster's logic did not convince the members from the South. The necessary appropriation bill was finally passed, but a heavy tail to the kite was attached by the following resolution:—

It is therefore the opinion of this House that the Government of the United States ought not to be represented at the Congress of Panama except in a diplomatic character, nor ought they to form any alliance, offensive or defensive, or negotiate respecting such an alliance with all or any of the South American republics; nor ought they to become parties with them, or either of them, to any joint declaration for the purpose of preventing the interference of any of the European powers with their independence or form of government, or to any compact for the purpose of preventing colonization upon the continents of America, but that the people of the United States should be left free to act, in any crisis in such a manner as their feelings of friendship toward these republics and as their own honor and policy may at the time dictate.

The way being at last cleared, on May 8 (1826), Mr. Clay, the Secretary of State, instructed the two envoys:—

“The assembly of a Congress at Panama, composed of diplomatic representatives from independent American nations, will form a new epoch in human affairs.” With the idea before them that the republican nations of the New World should meet to examine and pass upon their own interests, which were now distinct and separate from the interests of the Old World, the commissioners were to devise means of preserving peace in future among the American nations. They were to assist in the revision of a number of vaguely expressed or unsatisfactory principles of international law, especially as related to the sea—“to propose a joint decla-

ration of the several American states, each, however, acting for and binding only itself, that within the limits of their respective territories no new European colony will hereafter be allowed to be established."

On the question of the interoceanic canal, should it come before them for consideration, they were to take the stand that — "If the work should ever be executed so as to admit of the passage of sea vessels from ocean to ocean, the benefits of it ought not to be exclusively appropriated to any one nation, but should be extended to all parts of the globe upon the payment of a just compensation or reasonable tolls."

The Congress of Panama assembled on the 22d of June, 1826, but neither of the American representatives was present. Mr. Anderson, one of the commissioners, was Minister at Bogota at the time of his appointment to Panama; he died on his way to attend the meeting. The other American delegate, Mr. Sargent, had been so long delayed by the lengthy debate in Congress over the expediency of his mission that he was unable to effect his departure from the United States in time to be present.

The Panama Congress proved to be a fiasco; neither the United States, Chili, Brazil, nor Buenos Ayres was represented, and without the coöperation of these, the largest and most important states of the Western Hemisphere, the resolutions of the Congress necessarily reached a "lame and impotent conclusion." The more soul-inspiring and magnificent the utterances of the few delegates present at the convention, the more ridiculous they appeared. A treaty of perpetual union and confederation, a sort of offensive and defensive alliance, was entered into by the delegates — the purpose being to pledge all the American states to aid each other in maintaining their own integrity. Of all the states represented, Colombia alone ratified the treaty. Indeed, had the delegates of the United States been in attendance at the conference, they could not have subscribed to the resolutions that were adopted.

A resolution to meet again the following year in ~~South~~ ~~America~~ ^{South America} was only responded to by the two United States

delegates. These men, with bulky instructions in their pockets, found themselves alone at the appointed time and place. Their sense of humor was no doubt severely taxed. In fact, the South and Central American states had already begun their careers of civil strife; they had neither the time nor inclination to deliberate over matters relating to the common welfare.

As the Panama Congress proved to be a hopeless failure, chief interest in the event, as previously suggested, is to be found solely in the numerous interpretations of the Monroe Doctrine, which it elicited. The many opinions — coming directly from President Adams and his Secretary of State, Mr. Clay, from the most prominent statesmen of the country, and as embodied in the resolutions of both Houses of Congress — throw a flood of light upon the contemporaneous construction of the doctrine.

Although in these Panama debates the principles, enunciated by President Monroe, were more or less overshadowed by other political considerations, yet enough was said bearing directly upon the interpretation of the doctrine to illustrate the views of the statesmen of the period on the subject.

First and foremost, Adams, no doubt the actual author of that part of the doctrine bearing upon future colonization by European powers in the Western Hemisphere, and probably a joint author of the rest of the message included in the "Doctrine," was the one who, of all others, could speak most authoritatively upon the subject. In reference to the enunciations of his predecessor in office, he said: "Our views would extend no further than to a mutual pledge of the parties to the compact to maintain the principle in application to its own territory, and to permit no colonial lodgments or establishments of European jurisdiction upon its own soil." The hesitation of the President to accept the invitation of the South Americans, and afterward his insistence that the functions of the plenipotentiaries should be diplomatic only, and in no sense legislative or binding upon the government, shows definitely that he was not of a mind to pledge the country to execute a policy which he had him-

self taken so prominent a part in framing. This, too, was in spite of the fact that he believed the Americas had a system and interests of their own, removed from and perhaps opposed to those of Europe. When called upon to act, therefore, President Adams narrowed his former position and declared a new doctrine. "Let every state defend the integrity of its own territory." That, after all, was a useless suggestion.

Clay followed the sentiment of his chief,—the United States should not be obliged to guarantee the execution of the principles of the Monroe Doctrine.

The Senate and House passed resolutions, reaffirming the policy of non-interference, asserting the broad principle that the people of the United States should be left free to act, in any crisis, as their own honor and policy might dictate. Monroe Doctrine or no Monroe Doctrine, in case of foreign aggression, the Government of the United States should always be at liberty to follow the course of action that the necessities of the occasion called for. There should be no fixed rule to govern future contingencies and embarrass the nation. Daniel Webster seems to have voiced the majority opinion of Congress during this Panama debate, when he said:—

It [Monroe's Declaration] did not commit us, at all events, to take up arms on any indication of hostile feeling by the powers of Europe towards South America. If, for example, all the states of Europe had refused to trade with South America until her states should return to their former allegiance, that would have furnished no cause of interference to us. Or if an armament had been furnished by the allies to act against provinces the most remote from us, as Chili or Buenos Ayres, the distance of the scene of action diminishing our apprehension of danger, and diminishing also our means of effectual interposition, might still have left us to content ourselves with remonstrance. But a very different case would have arisen, if an army, equipped and maintained by these powers, had been landed on the shores of the Gulf of Mexico, and commenced the war in our own immediate neighborhood. Such an event might justly be regarded as dangerous to ourselves, and, on that ground, call for decided and immediate interference

by us. The sentiments and the policy announced by the declaration, thus understood, were, therefore, in strict conformity to our duties and our interest.

In this same debate, James K. Polk, member from Tennessee, declared : —

When the message of the late President of the United States was communicated to Congress in 1823, it was viewed, as it should have been, as the mere expression of opinion of the Executive, submitted to the consideration and deliberation of Congress, and designed probably to produce an effect upon the councils of the Holy Alliance, in relation to their supposed intention to interfere in the war between Spain and her former colonies. That effect it probably had an agency in producing ; and if so, it has performed its office. The President had no power to bind the nation by such a pledge.

With the close of the year 1826, the Monroe Doctrine is found to be limited by the following qualifications : —

1. No future colonization on the Western Hemisphere by the European powers can be permitted to take place. The United States will ask the new Spanish-American republics to adopt this rule so far as their own territory is concerned.

2. The United States shall remain free to adopt any course its honor and policy may dictate touching alliances with foreign nations and touching the practical operation of the Monroe Doctrine.

3. The republics of the New World have a set of primary interests of their own, but the United States will not join with any of them in a declaration against interference from abroad.

In short, therefore, the statesmen of the day believed the primary object of the Monroe Doctrine had been accomplished — the Holy Alliance was dead, and Russia had abandoned her West coast colonization schemes. The measure being protective only, its principles might revive as occasion called them into life ; but it was distinctly to be understood that, beyond a point of self-defence, the United States had no

intention of assuming a rôle of guardianship over the Western Hemisphere, nor of constituting herself the protector of South America.

VII. SPANISH AMERICA AND CUBA

From the close of the administration of John Quincy Adams, in 1829, to the beginning of Polk's administration, in 1845, there occurred a series of events connected with Spanish-American interests which apparently called for action on the part of the United States Government involving the principles of the Monroe Doctrine, but which were, nevertheless, permitted to pass unnoticed. It has been said that during that period the doctrine was dormant. All attempts to secure legislative action upon the subject failed in Congress, and the Monroe Doctrine was remembered only as the policy of a past administration. It was, however, universally endorsed as a good policy to revive, should occasion demand it. In those days the words of President Monroe did not apparently receive the broad interpretation that has been given to them in more recent years. The attitude of the country toward Europe, during this period, was one that would likely have been assumed, even had no Holy Alliance ever threatened to meddle in American affairs, and had no defiant message been sent back across the sea. The position assumed by all those who controlled the foreign policy of the United States was simply one of self-defence, and in the absence of definite threats from abroad, the doctrine was not invoked.

The feelings of cordial sympathy in the United States toward South Americans, which had been so freely extended when those people were struggling for their liberty, sensibly cooled when Spanish America finally succeeded in severing its political relations with Spain. In a very short time the South American states gave evidence of a woful lack of political stability. Any sort of permanent confederation among the various states was soon shown to be impossible. A regular succession of revolutions distressed the land, and

the insatiate cupidity and reckless extravagance of their political leaders augured ill for the perpetuation of republican government in South America.

Although the Monroe Doctrine had been intended by its authors only as a defensive measure for the United States, South Americans clamored for its application whenever they encountered difficulties with Europe.) Believing, as they did, that the doctrine was promulgated as much for their benefit as for the North Americans, they loudly denounced the United States as a monster of bad faith, when the latter refused to become a party to their quarrels or declined to give them material aid, or even the full quota of sympathy which they felt to be their due.

In 1829, the Malavinas Islands (Falklands), which belonged to England, were seized upon by the Buenos Ayrean authorities, who, as successors of Spain, claimed a right to the group. The following year, the attention of the United States was drawn to the fact by the arrest of some North American seal hunters on the Falkland shore. The arrest seemed to be unjustified by the circumstances, — the fishermen having merely followed a customary privilege granted by England, — and the American sloop of war, the *Lexington*, not only liberated the prisoners, but in retaliation deported the Buenos Ayrean governor (1831). The English thereupon resumed control, and complaint of the Argentine Republic, that this act involved a gross violation of the Monroe Doctrine never ceased to be pressed in Washington. The United States never admitted a claim for indemnity, and has always maintained that it was no party to the controversy between Buenos Ayres and Great Britain, — the rights of the latter having long antedated those of the former in the Falklands. Had the same construction been placed upon the words of President Monroe that has frequently been applied since, President Jackson might well have regarded this incident as one demanding the interference of the United States, — at least to the extent of investigating the disputed claims of Great Britain to the Falkland Islands. The executive, however, appears to have

entertained no fears of European colonization in the Western Hemisphere, when located at so distant a point from the United States as the Falkland Islands.

In 1835, Brazil and Buenos Ayres recognized the independence of Uruguay by a treaty made through the mediation of England. Some years later, Buenos Ayres threatened to attack the newly created nation it had so recently recognized, and Brazil called upon Great Britain and France for aid in maintaining the integrity of Uruguay. In answer to this call those two powers established a naval blockade along the coast of Buenos Ayres. The United States having no live interest in the dispute, and feeling itself in no way threatened by such an act of European intervention, refused to interpose. Again the United States was roundly denounced in South America for the abandonment of her principles.

Through her foothold in Central America along the Mosquito coast and in Honduras, England had, for many years, been gradually encroaching upon Nicaragua. Great Britain's claims to territory in Central America dated from the seventeenth century, although some of these claims were judged, in the United States, to be of doubtful origin. Up to 1835, extensions of her Belize boundary lines had been made gradually and noiselessly; but in that year the English made so decided a territorial advance into Honduras and Nicaragua, that the Central American authorities appealed to the United States. President Jackson was reminded that "it had always been the policy of the United States to prevent and resist European settlements in America." General Jackson thought it inexpedient to interfere. From a more modern point of view, he would seem not to have been imbued with the spirit of Monroe's message, for a similar move on the part of Great Britain in Venezuela, in 1896, caused great excitement in the United States, notwithstanding the fact that Venezuela is considerably further removed from the United States than is Nicaragua. Subsequently, however, British territorial advances into Central America have been opposed by the United States, upon the sole ground of

violation of the Monroe Doctrine, but not seriously until the subject of an interoceanic canal had come forward more prominently.

In 1842, and again two years later, England found it necessary to besiege San Juan, for the sake of impressing upon the natives a respect for the validity of her territorial claims. These decidedly aggressive acts were passed unnoticed in Washington.

Other instances might be cited which prove to a certain extent that for a number of years after the famous message had been issued, it was not viewed by contemporary statesmen in the same light in which it is generally regarded to-day. The particular danger against which Mr. Monroe had directed his protest had ceased to exist. Its principles were only to be revived in case such acts of aggression or armed interference in America seemed actually to threaten the safety of the United States. The idea that the United States should offer its military forces to South or Central America, at its bidding, was never entertained. It was never denied that European nations had the right belonging to any sovereign power to use force in South or Central America, if necessary, in the collection of debt, or to obtain redress for grievances. However, while the United States for a considerable period took little cognizance of European intervention in South and Central America, President Monroe's declaration was by no means forgotten; this is particularly evidenced in relation to Cuban affairs.

The proximity of Cuba to the American shores has always made it the subject of jealous watchfulness by the United States, and during each administration from that of President Monroe, a share of attention has been directed to it.

As early as 1809, Jefferson looked longingly toward Cuba, although he feared the dangers of a general expansion policy. He wrote to President Madison: "I would immediately erect a column on the southernmost limit of Cuba, and inscribe on it a *ne plus ultra* as to us in that direction. . . . Cuba can be defended by us without a navy, and this develops the principle which ought to limit our views."

President Madison was not so thoroughly in favor of the annexation of Cuba. His views, as expressed in a letter to William Pinkney, in 1810, reflect the sentiment which thirteen years later crystallized into a national doctrine. "The position of Cuba gives to the United States so deep an interest in the destiny, even, of that island, that although they might be an inactive, they could not be a satisfied spectator at its falling under any European Government, which might make a fulcrum of that position against the commerce and security of the United States." These views of President Madison were at that time more acceptable to the people of the United States than was the idea of actual annexation.

During the two administrations of President Monroe, great anxiety was felt in Washington lest Cuba might be seized by some European power. The English press, and some of the more influential British statesmen, constantly insisted upon the acquisition of the island, as an offset to the preponderating influence in West Indian affairs, which the cession of Florida had given to the United States. While the British Government does not seem to have seriously contemplated the occupation of Cuba, apprehension lest it might decide upon such a course kept the administration not a little agitated. This fear was enhanced by the fact that numbers of pirates infested the Cuban coast and preyed upon England's commerce. The Spanish Government was utterly unable to suppress these marauders, and the threatened British demonstrations against them, if actually made, would almost certainly lead to a seizure of the island itself.

The French invasion of Spain, in 1822, also gave rise to many alarms in the United States, in respect to the fate of Cuba. It was generally believed that Spain must, sooner or later, lose her hold upon the island, and that Cuba would naturally fall to the share of France, — or perhaps of Great Britain, who was known to be furnishing the means to the constitutional government of Spain to resist Ferdinand and his French allies. It had always been one of John Quincy Adams' fixed ideas that the acquisition of Cuba would eventually become a necessity to the political interests of the

Union. He was moved by the threatened loss of Cuba by Spain to instruct Mr. Nelson, the American Minister at Madrid (1823) : —

. . . These islands from their local position are natural appendages to the North American continent, and one of them [Cuba] almost in sight of our shores, from a multitude of considerations, has become an object of transcendent importance to the commercial and political interest of our Union. . . . In looking forward to the probable course of events for the short period of half a century, it is scarcely possible to resist the conviction that the annexation of Cuba to our Federal Republic will be indispensable to the continuance and integrity of the Union itself.

Mr. Adams did not then consider the moment auspicious for the annexation of Cuba to the Union, but he believed, nevertheless, that

. . . There are laws of political as well as physical gravitation; and if an apple, severed by the tempest from its native tree, cannot choose but fall to the ground, Cuba, forcibly disjoined from its own unnatural connection with Spain, and incapable of self-support, can gravitate only towards the North American Union, which, by the same law of nature, cannot cast her off from its bosom.

Jefferson was still of the opinion that possession of Cuba by Great Britain "would indeed be a great calamity to us," but he advocated the acquisition of Cuba by peaceful means only.

The publication of President Monroe's message of 1823 may have had a decided influence upon France in checking her alleged Cuban designs; nevertheless, abundant rumors of French plots to acquire the island continued to vex Presidents Adams and Jackson. The continued withholding of Spanish recognition of Colombian and Mexican independence determined those states to attempt the seizure of Cuba and Porto Rico, should Spain persist in her stubborn policy of maintaining war against them. The possibility of thus transferring the theatre of Spanish-American hostilities to Cuba

aroused Mr. Clay's apprehensions. He accordingly sought to induce Spain to yield at once to the demands of Colombia and Mexico, and he threatened, moreover, to bring about the occupation of Cuba by United States armies, rather than suffer the dangers of a foreign war in the islands "whose fortunes have such a connection with the prosperity of the United States." At this juncture a French fleet appeared in Cuban waters (1825), and the fact drew from the Secretary of State an emphatic protest. He wrote to the American Minister in Paris: "With the hope of guarding beforehand against any possible difficulties on that subject that may arise, you will now add that we would not consent to the occupation of those islands [Cuba and Porto Rico] by any other European power than Spain under any contingency whatever." At the same time, President Adams took occasion to announce through the various American Foreign Ministers to all European powers that the United States "desired no change in the political condition of Cuba; that they were satisfied that it should remain open, as it now is, to their commerce, and that they could not with indifference see it passing from Spain to any European power."

Similar statements were freely expressed during the Jackson, Van Buren, and Tyler administrations. Anxiety upon the subject of European intervention was never permitted wholly to relax, chiefly on account of the fact that the Cubans themselves were generally in a ferment of rebellion against the extortionate and oppressive rule of the mother country. Opportunities for intervention were therefore frequent, and the prize was unusually tempting.

Some disagreements between Great Britain and Spain, growing out of a treaty for the suppression of the slave trade in Cuba, again brought forth rumors of English intention to occupy the island. Mr. Vail, the American Minister in Madrid, was instructed (1840) "to assure the Spanish Government, that in case of any attempt, from whatever quarter, to wrest from her this portion of her territory, she may securely depend upon the military and naval resources of the United States to aid her in preserving or recovering it."

Three years later, Daniel Webster, as Secretary of State, addressed the United States Consul in Havana, to the same effect, his letter being also used as a basis of instructions to Henry Irving, the American Representative in Spain. He said: "The Spanish Government has long been in possession of the policy and wishes of this government in regard to Cuba, which have never changed, and has repeatedly been told that the United States never would permit the occupation of that island by British agents or forces upon any pretext whatever; and that in the event of any attempt to wrest it from her, she might securely rely upon the whole naval and military resources of this country to aid her in preserving or recovering it."

Until about the beginning of the Polk administration, the American policy toward Cuba appears therefore to have been a consistent one, and wholly in accord with the avowed principles of the Monroe Doctrine. The idea of annexation found a few hearty supporters; but even among its champions, that notion was prompted by expediency rather than from a desire for territorial gain. Such ideas were especially manifested at those times when the safety of the United States was supposed to be imperilled by European intrigues to seize Cuba. To prevent that contingency the United States was willing to go to any length. It would guarantee Cuba to Spain, and pledge to her the use of its army and navy; if forced to it, it would annex the island. Upon that point, the application of the Monroe Doctrine was clear and never disputed. After the close of the Mexican War the policy of the United States toward Cuba underwent considerable change. A fever of expansion seized the people, and the foreign policy of the nation became bolder. Covetous eyes were cast toward the "Pearl of the Antilles." The principles of the Monroe Doctrine were neither forgotten nor overlooked, but they were considerably distorted and perverted to meet political and selfish ends. The purchase of the island was impossible, first, because Spain always indignantly refused to part with "her faithful colony"; and, secondly, because the slave-holders of the Southern states,

and later the anti-slavery party in Congress, successfully thwarted every effort the national government made looking toward purchase. Indeed, the great slavery controversy that soon came to overshadow all other questions in national politics affected any action respecting Cuba. It colored every discussion on the Monroe Doctrine, as it tinged every phase of American politics.

From about 1845 to the beginning of the Civil War, our connection with Cuban affairs is marked by a desire for annexation not so much as a measure of self-protection, as too often asserted, but as a means of extending the slave-holding area of the country. To maintain itself in Congress, the slave power had need of more representatives, and to get a larger representation in Washington, additional territory was essential. The land hunger which sharpened the appetite for Texas was equally strong for Cuba, and this period of fifteen years preceding the Rebellion of the Southern states, developed a series of attempts on the part of the United States to obtain the island either by purchase or by force.

In 1845-47, a strong popular sentiment in favor of the purchase of Cuba prevailed in the Western states, which, championed by the press, soon spread over the entire country. The movement was given fresh impetus by reports that Great Britain was again contemplating the seizure of Cuba — this time for the purpose of holding Spain's valuable possession as a security for the payment of Spanish bonds. The bulk of the Spanish debt was owned in London, and the interest was greatly in arrears. The President was therefore called upon to act immediately. Mr. Polk's aggressive foreign policy was relied upon by the country, especially by the South and West, to accomplish this cherished object.

On January 17, 1848, President Polk sent lengthy and "profoundly confidential" instructions to Mr. Saunders, the American Minister in Madrid, touching upon the extreme danger of English annexation of the island, which he sought to prove by a full account of British aggression in Central America. He authorized Mr. Saunders to urge

upon the Spanish Government the advisability of parting with Cuba to the United States, but he hastened to give assurances that the United States would not seek to acquire it "except by the free will of Spain." It was to be by "fair purchase" only, and \$100,000,000 was suggested as a maximum price. Popular feeling in Spain was outraged by the very suggestion of releasing this gem of her few remaining possessions. "It was more than any minister would dare," replied Mr. Saunders to Mr. Buchanan, "to entertain any such proposition; sooner than see the island transferred to any power, they would prefer seeing it sunk in the ocean." It thus became clear that the purchase of Cuba was entirely out of the question.

In 1849-50, during the presidency of Gen. Taylor, an incident occurred in connection with Cuban affairs which brought to light a new phase of the Monroe Doctrine. Among the many political disturbances and revolutionary movements which illustrate the history of Cuba, one in particular, the Lopez rebellion of 1849-50, received its main, if not entire, support, in the United States.

Narciso Lopez, a Venezuelan by birth, once prominent in Spanish military service, became the leader of a revolutionary party in Cuba. In the summer of 1849, he organized an expedition in New York, made up for the most part of Mexican war veterans, and was about to embark in the cause of "Cuba libre" when he was arrested by the United States authorities. President Taylor thereupon issued a proclamation (August 11, 1849) in which he announced that "It is the duty of this government to observe the faith of treaties and to prevent any aggression by our citizens upon the territories of friendly nations. I have therefore thought it necessary and proper to issue this my proclamation to warn all citizens of the United States, who shall conduct themselves with an enterprise so grossly in violation of our laws and our treaty obligations, that they will thereby subject themselves to the heavy penalties denounced against them by our acts of Congress, and will forfeit their claim to the protection of their country. No such persons must

expect the interference of this government in any form on their behalf, no matter to what extremities they may be reduced in consequence of their conduct."

There can be no question of the official neutrality of the United States Government, but the fitting out of filibustering expeditions could not be prevented. Undismayed by the failure of his first attempt, Lopez travelled through the Southern states, where he found both cordial sympathy and material aid for his project. A second expedition was organized (1850) under the auspices of some wealthy Southern planters, but met with reverses in Cuba. Lopez was then prosecuted by the United States for violation of the neutrality laws, but having escaped conviction, he proceeded to organize a third expedition. This time, along with many American citizens upon his staff and within his ranks, he was captured, sentenced, and executed in Havana by the Spanish authorities. Public indignation in the United States, especially in the South, was keenly aroused by the execution of the Americans in Havana. Anti-Spanish demonstrations took place in New Orleans. Spain at once appealed to France and England for protection against any American attack upon Cuba which now seemed imminent. These two powers despatched naval forces to the West Indies, and declared their intention of repelling any invasion of Cuba. While the United States Government disclaimed any purpose of forcibly seizing Cuba, the naval demonstration of England and France in Cuban waters was most offensive. The act brought forth a protest from the administration predicated upon the Monroe Doctrine, for the action of these two powers could only be regarded by the United States "with grave disapproval, as involving on the part of European sovereigns combined action of protectorship over American waters." Great Britain and France, being strongly urged by Spain, went still farther. In April, 1852, the French and English diplomatic agents in Washington proposed to the United States the signing of a tripartite agreement, by virtue of which the parties should disavow all present or future intention to obtain possession of the island of Cuba, and

should bind themselves to discountenance all attempts to that effect.

President Fillmore's attitude toward Cuba was made known in his annual message of 1852, in which he gave assurance that the United States not only contemplated no designs against Cuba, but that he "should regard its incorporation into the Union at the present time as fraught with serious peril." Its acquisition by the United States against Spanish opposition he regarded "as a hazardous measure." Notwithstanding these views, the invitation of France and Great Britain was declined by the President for several good reasons. While it might have been reassuring to know that both England and France stood pledged to keep their hands off Cuba,—a pledge falling quite in line with the Monroe Doctrine,—yet it was considered improper to admit European nations into the councils of the United States upon an equal footing relative to the affairs of a territory so essentially connected with American interests.

The Secretary of State, Mr. Webster, had already given the Spanish Minister little hope to expect the President to consent to the desired arrangement with Great Britain and France. His objections to the measure lay principally in the direction of avoiding entangling alliances, and in the desire of the United States "to keep itself free from national obligations, except such as affect directly the interests of the United States themselves." The death of Mr. Webster, in the summer of 1852, transferred the entire subject to his successor, Mr. Everett. The latter, in a communication to Comte de Sartiges (December 1, 1852), reviewed the attitude of the United States in this matter, and although he made no mention of the Monroe Doctrine as such, his reference is clear when he says: "The President does not covet the acquisition of Cuba for the United States. At the same time he considers the condition of Cuba as mainly an American question. The proposed convention proceeds on a different principle. It assumes that the United States have no other or greater interest in the question than France or England, whereas, it is only necessary to cast one's eye on the

map to see how remote are the relations of Europe, and how intimate those of the United States with this island."

The principles of the Monroe Doctrine were not only adhered to by the President, but the interpretation of its words was enlarged into a protest against permitting either European voice or arms to control the destinies of New World territories that lay near the borders of the United States. Beyond doubt the position was well taken. To have entered into such an agreement would not only have violated the older doctrine against entangling alliances with Europe, but would have bound American hands in a particularly awkward manner. If the United States desired to prevent European annexation of Cuba, it would have been consummate folly thus to curtail her freedom of action. Of all the Spanish-American states, Cuba came nearest home. A concentration of foreign interests there would have proved a danger not to be tolerated for a moment. In case of any such threat from abroad, the true policy of the United States would have been to seize the island at once.

On January 4, 1854, one month after the refusal of the United States to take part in the proposed tripartite convention, Mr. Cass of Michigan introduced into the Senate a joint resolution declaring :—

"The American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European power." And while "existing rights should be respected," and will be by the United States, they owe it to their own "safety and interests" "to announce, as they now do, that no future European colony or dominion shall, with their consent, be planted or established on any part of the North American continent." And should the attempt be made, they thus deliberately declare that it will be viewed as an act originating in motives regardless of their "interests and their safety," and which will leave them free to adopt such measures as an independent nation may justly adopt in defence of its rights and its honor.

That while the United States disclaim any designs upon the Island of Cuba, inconsistent with the laws of nations and with their duties to Spain, they consider it due to the vast importance

of the subject to make known in this solemn manner that they should view all efforts on the part of any other power to procure possession, whether peaceably or forcibly, of that island, which, as a naval or military position, must, under circumstances easy to be foreseen, become dangerous to their southern coast, to the Gulf of Mexico, and to the south of the Mississippi, as unfriendly acts directed against them, to be resisted by all the means in their power.

John P. Hale, of New Hampshire, moved to amend this resolution by the insertion of the word "Canada." No action was taken on the resolution, but its introduction provoked a lengthy discussion upon the subject of European interference on the Western continent, in which the principles of the Monroe Doctrine were very generally endorsed. The Southern members advocated an extension of the doctrine into a justification for seizing Cuba, while the Northern members, though less decided in their opinions, were still willing to press the words of Monroe into the service of acquiring territory which lay to the north of the United States. Only Mr. Howard of Texas ventured the belief that the Monroe Doctrine did not mean "that every settlement upon any sand-bank on this continent is an offence which is to result in war."

To succeed President Fillmore, the Whigs failed to elect their candidate, General Scott. He had been the war hero of 1845, but was reduced in 1852 to the "peacock of politics, all fuss, feathers, and fireworks." The Democratic party, demanding an aggressive foreign policy, and decrying the "old fogyism" of Taylor and Fillmore, triumphantly placed Franklin Pierce in the White House. The slavery question had made the annexation of Cuba a party issue, and the Democrats looked to Pierce to carry out their wishes in this respect. In his inaugural address, the President declared that the policy of his administration would not be controlled "by any timid foreboding of evil from expansion." Indeed, he further declared, "it is not to be disguised that our attitude as a nation, and our position on the globe, render the acquisition of certain possessions not within our

jurisdiction eminently important for our protection, if not, in the future, essential for the preservation of the rights of commerce and the peace of the world." This pointed clearly to Cuba. The Southern Democrats were greatly encouraged, and a persistent clamor arose for the acquisition of the island. With that purpose in view, the American ministers to England, France, and Spain were chosen. Pierre Soulé of Louisiana was sent to Madrid. He was a radical Cuban annexationist, and had attacked President Fillmore most bitterly the previous year in Congress, for his lack of sympathy with the Lopez filibusters. Mr. Soulé was determined to acquire the island, and entered upon his mission to Spain with that single purpose before him. President Pierce's Secretary of State, William Marcy, was the conservative element of the administration; he frequently instructed Mr. Soulé to bring about a readjustment of the commercial relations between Spain and the United States; and although he spoke of purchasing Cuba, he did not believe Spain would be "at all inclined to enter upon such a negotiation." "Nothing will be done, on our part, to disturb its [Cuba's] present connection with Spain, unless the character of that connection should be so changed as to affect our present or prospective security. While the United States would resist, at every hazard, the transference of Cuba to any European nation, they would exceedingly regret to see Spain resorting to any power for assistance to uphold her rule over it. Such a dependence on foreign aid would, in effect, invest the auxiliary with the character of a protector, and give it a pretext to interfere in our affairs, and also generally in those of the North American continent."

These mild instructions were not pleasing to Mr. Soulé, nor were they in accord with the sentiments of the political party in power. Having arrived in Madrid, Mr. Soulé soon reported that Spain was in a hopeless state of anarchy, and that there was abundant evidence tending to show that the aid of Great Britain and France was to be again invoked to forestall any attempts to bring about Cuban independence or annexation to the United States. Mr. Marcy thereupon

authorized Mr. Soulé to reopen negotiations at once for the purchase of the island, raising, upon this occasion, the price offered to \$130,000,000. If, however, the Spanish prejudice to a sale was found to be too strong to overcome, Soulé was authorized to suggest delicately to Spain that she might permit Cuba to detach herself from her dominion, and to become a free nation ; in this indirect way the same object could ultimately be accomplished.

Just at that moment, the alleged illegal seizure of the cargo of an American vessel, the *Black Warrior*, by the customs authorities in Havana, suddenly brought the two nations almost to the verge of war. This Spanish assault against American shipping was eagerly caught up by the South as an excuse to substitute force for diplomacy, and President Pierce was very nearly induced to give way to the passionate appeals of his own party leaders. The slavery party raised the standard of the Monroe Doctrine, and had their counsels prevailed, a peculiar adaptation of those principles would have resulted. It had, for many years, been a favorite object of Great Britain to do away with the institution of negro slavery in Cuba. Spain had, from time to time, displayed a willingness to accede to England's repeated solicitations in this respect, and especially at those moments when English goodwill or coöperation was desirable in maintaining inviolate her control over the island. The South pretended to regard the emancipation of Cuban slaves as a measure fraught with the gravest danger to the United States. The absorption of a free-soil Cuba into the Union was, from their point of view, undesirable. With Cuba as a slave state added to the Union, "slavery might bid defiance to its enemies."

In 1855, the Richmond *Enquirer*, a leading Democratic organ, declared that the "menace of a design to Africanize Cuba, or to emancipate the slaves, would be a grievous act of hostility, and would authorize the United States to take any means of retaliation, or to wage war." The freedom of the Cuban slaves would leave that island in the control of a vast number of blacks who might at any moment convert Cuba into a second Haiti or Santo Domingo. At the very

least, emancipation in Cuba would greatly imperil the policy of the United States touching the question of human slavery.

Mr. Soulé's diplomacy did not bring about a satisfactory settlement of the *Black Warrior* affair. The President was far from being satisfied with the results of Mr. Soulé's hot-headed methods, and the Democrats called all the more loudly upon its President for action — for a swift retaliation upon Spain, and for the immediate annexation of Cuba.

The more conservative Secretary of State, Mr. Marcy, was driven to a new plan for the settlement of the vexatious Spanish-American question, which plan he hoped would bring about the desired results without a resort to arms. Convinced that continuance of Soulé's efforts in Madrid would be unprofitable, he proposed (June, 1854) the appointment of an extraordinary commission, to be composed of "two distinguished citizens" who should act in conjunction with Mr. Soulé in reënforcing the demands of the United States against Spain. The project creating such a commission, however, was abandoned, and as a substitute therefor, Mr. Soulé was instructed (August, 1854) to meet and consult with Messrs. Buchanan and Mason, the American ministers in London and Paris.

I am directed by the President to suggest to you a particular step, from which he anticipates much advantage to the negotiations with which you are charged on the subject of Cuba. . . . It seems desirable that there should be a full and free interchange of views between yourself, Mr. Buchanan and Mr. Mason, in order to secure a concurrence in reference to the general object.

The simplest and only very apparent means of obtaining this end is, for the three ministers to meet, as early as may be, at some convenient central point (say Paris), to consult together, to compare opinions as to what may be advisable, and to adopt measures for perfect concert of action in aid of your negotiations at Madrid.

While the President has, as I have before had occasion to state, full confidence in your own intelligence and sagacity, he conceives that it cannot be otherwise than agreeable to you, and to your colleagues in Great Britain and France, to have the consultation suggested, and thus to bring your common wisdom and knowledge to bear simultaneously upon the negotiations at Madrid, London, and Paris.

Accordingly, the three American ministers met in conference at Ostend, October 9, 1854, and adjourning to Aix la Chapelle, there signed a report on the 18th of the same month. This series of resolutions is known as the "Ostend Manifesto."

After a lengthy argument in favor of the acquisition of Cuba, and an enumeration of the many advantages which would accrue to both Spain and the United States by virtue of a transfer of sovereignty in Cuba, the report advises the offer to Spain of \$120,000,000 for the island. Should Spain decline the offer, the use of force is proposed to accomplish the same end. The advisability of such radical measures was based on the broad principles of self-preservation, — the Monroe Doctrine. "Our past history forbids," it reads, "that we should acquire the island of Cuba without the consent of Spain, unless justified by the great law of self-preservation, but," the authors hasten to add with a flourish of virtue, "we must, in any event, preserve our own conscious rectitude, and our own self-respect." It became a question, they asserted, whether or not the continued possession of Cuba by Spain amounted to a menace "to our internal peace, and the existence of our cherished Union." If such be the case, as they believed it was, then we would be justified by "every law, human and divine," in wresting it from Spain.

The position taken by Messrs. Buchanan, Soulé and Mason was certainly many degrees beyond the farthest limits of the Monroe Doctrine. The latter called for opposition to foreign aggression in the Western continent, and expressly stated that no action would be taken against those European powers already holding territory in the New World — unless they sought to expand their holdings. The true motives of the Ostend Manifesto were, after all, too thinly veiled. The words of Mr. Monroe had been obviously tortured into the furtherance of a scheme to extend the slave-holding area of the United States. The administration promptly condemned the manifesto.

The policy of forcible acquisition, in case amicable nego-

tiations for purchase should fail, was too radical even for President Pierce. Mr. Marcy referred to it as "a robber doctrine," which would bring shame upon the administration, and would disgrace the nation in the eyes of the world. "We cannot afford to get it" (Cuba), he said, "by robbery or by theft."

The Ostend Manifesto was left entirely unmentioned in the President's annual report to Congress. The following winter resolutions in Congress calling for the report, and all the correspondence relating thereto, were suppressed, and every effort was made by the administration to prevent the publicity of the document.

From 1854 to the outbreak of the Civil War, Cuba continued to occupy a prominent place in the foreign affairs of the United States. From the close of the Rebellion down to the late Spanish War, this same interest in Cuba was kept alive, but in the absence of any definite threats by other nations to acquire the island, there were no discussions in Congress relative to the subject. After the collapse of slavery in the United States, the desire for Cuban annexation largely disappeared, nor was it revived until very recently.

During the past thirty-five years, several revolutions in Cuba brought about relations between the United States and Spain which were substantially similar to those which existed prior to the breaking out of the late Spanish-American War, — conditions with which every one is familiar. If not actually desiring annexation, the United States has, upon all occasions, manifested a deep interest in Cuban independence, and has sometimes with difficulty preserved a neutral attitude.

In this relation, one incident is noteworthy in its bearings upon the Monroe Doctrine. The Cespides rebellion in Cuba had dragged along for many years, with the customary record of cruelties and barbarities which seems generally to have marked Spanish-Cuban warfare. The inability of Spain to suppress the rebellion induced President Grant, in his annual message of December 7, 1875, to hint at intervention. Spain had stubbornly refused to listen to mediation; and

as the conditions seemed to warrant the United States in recognizing the independence of the island, intervention was looked to as the only means left for ending a hopeless conflict. In his note of November 5, 1875, to Mr. Cushing, the American Minister in Madrid, the Secretary of State, Mr. Fish, had already anticipated these suggestions of the President. He wrote : —

In the absence of any prospect of a termination of a war, or of any change in the manner in which it has been conducted on either side, he [the President] feels that the time is at hand when it may be the duty of other governments to intervene, solely with a view of bringing to an end a disastrous and destructive conflict, and of restoring peace in the island of Cuba. No government is more deeply interested in the order and peaceful administration of this island than is that of the United States, and none has suffered as the United States from the condition which has obtained there during the past six or seven years. He will, therefore, feel it his duty at an early day to submit the subject in this light, and accompanied by an expression of the views above presented, for the consideration of Congress.

Copies of this note were sent to the American ministers at the various European courts for the purpose of ascertaining the attitude of these governments toward intervention in Cuba. It seems also to have been Mr. Fish's desire to secure Great Britain's coöperation. The replies of all the governments which had thus been approached, were unfavorable, and the matter was put aside. In a short time, however, the fact that Mr. Fish had seen fit to admit — indeed, to invite — European councils upon a matter so essentially American in all its bearings, brought upon him the odium of having neglected the proper observance of his country's traditions, and to having violated the principles of the Monroe Doctrine. Mr. Fish appears to have been sensitive to this accusation, and to have evaded an explanation of his course in seeking aid from abroad to oust Spain from Cuba.

Intervention in behalf of Cuba in 1898 was not predicated directly upon the Monroe Doctrine, although the Senate Committee on Foreign Affairs in April of that year, sub-

mitted a report upon United States relations with Spain and with Cuba, in which the following significant words occur: "We cannot consent upon any conditions that the depopulated portions of Cuba shall be *recolonized* by Spain any more than she should be allowed to found a new colony in any part of this hemisphere or islands thereof. Either act is regarded by the United States as dangerous to our peace and safety." Intervention was therefore favored upon the grounds of necessity as contemplated by the Monroe Doctrine, — it being justified by the Cuban situation, which had "become a menace to the world, and especially to the peace of the United States."

The resolution of Congress declaring war upon Spain for the relief of Cuba (April 19, 1898) was not, however, based upon the Monroe Doctrine. It merely recited the fact that the people of Cuba were, and of right ought to be, free. The United States also disclaimed any intention or disposition "to exercise sovereignty, jurisdiction, or control over said island, except for the pacification thereof, and asserts its determination when that is accomplished to leave the government and control of the island to its people."

VIII. TEXAS AND OREGON

James K. Polk entered upon the presidency in 1845, pledged to his party to complete the annexation of Texas, and to secure the whole of Oregon, to the Russian frontier of $54^{\circ} 40'$ north latitude. The slavery question underlay both propositions, and the principles of the Monroe Doctrine were appealed to by the President in both cases. The South, in order to maintain strength in Congress, was determined to acquire more territory open to the extension of slavery, and the North found a parallel necessity equally pressing to increase anti-slavery votes in Congress by the acquisition of more free-soil domain. For the South, the Western progress of slavery was checked at the Sabine River, which, by agreement with Spain in 1821, was recognized to be the boundary line between Louisiana and Texas. Texas

was then a province or state belonging to Mexico, although a large immigration of Americans from the Southern states, taking their slaves with them, gave to it a decidedly American cast, and established in Texas a strong political party, orthodox in the slavery creeds, and earnest in its agitation for annexation to the United States. In 1829 the Mexican Government abolished slavery, in consequence of which act Texas revolted, and seven years later established itself as an independent republic.

The Texans at once sought incorporation into the Union, and the Southern states clamored for its annexation against the opposition of the North. The issue became a vital one in the campaign of 1844, and Polk, the Democratic candidate, was on the side of annexation. Mexico had never acknowledged the independence of her seceding state, and was supposedly ready to fight rather than yield it to the United States.

The underlying motive for the acquisition of Texas was so apparent that a better reason for annexation had to be found, in order to circumvent the opposition of the North. Mr. Calhoun, Secretary of State under President Tyler, had become alarmed by his own zeal for its acquisition, and feared the North would become too vigorously aroused when his real motives were thoroughly understood; but Polk was fully equipped and ready to meet the situation. It was known in Congress that France and England were unfavorably impressed with the idea of Texan incorporation into the Union, on account of a supposed disturbance of the "balance of power" on the Western continent, which such a territorial change would bring about. In his message of December, 1845, Mr. Polk said:—

Even France, . . . most unexpectedly, and to our unfeigned regret, took part in an effort to prevent annexation and to impose on Texas, as a condition of the recognition of her independence by Mexico, that she would never join herself to the United States . . . and lately the doctrine has been broached in some of them [powers of Europe] of a "balance of power" on this continent to check our advancement. The United States . . . cannot

in silence permit any European interference on the North American continent, and should any such interference be attempted, will be ready to resist it at any and all hazards.

It is well known to the American people and to all nations that this government has never interfered with the relations subsisting between other governments. We have never made ourselves parties to their wars or their alliances; we have not sought their territories by conquest; we have not mingled with parties in their domestic struggles; and believing our own form of government to be the best, we have never attempted to propagating it by intrigues, by diplomacy, or by force. We may claim on this continent a like exemption from European interference. The nations of America are equally sovereign and independent with those of Europe. They possess the same rights, independent of all foreign interposition, to make war, to conclude peace, and to regulate their internal affairs. The people of the United States cannot, therefore, view with indifference, attempts of European powers to interfere with the independent action of the nations on this continent. . . .

The President had already said in his inaugural address of the previous March: —

None can fail to see the danger to our safety and future peace, if Texas remains an independent state, or becomes an ally, or dependency of some foreign nation more powerful than herself.

Was it not necessary, therefore, to take Texas, before Europe might intervene between her and Mexico, and, in the confusion of civil war, perhaps gain a foothold in the Lone Star state?

The scarecrow of European aggression in Texas was so obviously a pretence that it was never seriously considered by the government; but it disguised the real situation and furnished a soothing balm for the conscience. The acquisition of Texas, sooner or later, both on account of its geographical position and the temper of its people, was a moral certainty; but to take it in assumed fear that some other nation might do so, was a clear perversion of the Monroe Doctrine.

An exemplification of the "Polk Doctrine" was further given in the matter of the Oregon territory dispute, to which the President referred in the same message of December, 1845.

The term, "Oregon," was applied to a large district of territory lying between the Rocky Mountains and the Pacific Ocean, and embraced, in part, what now constitutes the present province of British Columbia and the states of Washington, Oregon and Idaho,—a total area of about six hundred thousand square miles. The United States' claim to this territory was based upon the Louisiana Purchase, the explorations of Captain Robert Gray in the Columbia River (1792), the discoveries of Lewis and Clark (1804–06), American settlements at Fort Hall and Astoria in 1808 and 1811, and the treaty of 1819, by which all Spanish title along the Pacific, north of latitude 42° , was surrendered to the United States. In 1824 Russia agreed to limit the southern boundary of her American possessions at latitude $54^{\circ} 40'$, and the United States at once set up a territorial claim to that line. This was contested by Great Britain, but an agreement to exercise joint sovereignty over the territory from the Columbia River on the south to $54^{\circ} 40'$ on the north, the disputed portion, temporarily suspended the controversy. Immigration of American and British subjects into this disputed territory began, and it was tacitly understood by these early settlers that eventually a majority among the residents would control in the final determination of sovereignty. With a better knowledge of this great territory came an appreciation of its value, and the Democratic party in 1844 took up the battle-cry of the "whole of Oregon or none." With "Fifty-four forty or fight" upon its banners, James K. Polk was elected. He at once entered upon negotiations for the acquisition of the entire extent of his party's territorial claim, as far as the Russian frontier.

In his inaugural address, he asserted that the American title was "clear and unquestionable" and "already are our people preparing to perfect that title by occupying it with their wives and children." An earnest attempt was made by the President in the summer of 1845 to reach an under-

standing through diplomatic negotiation with Great Britain, for as he afterward declared: "In deference to what had been done by my predecessors, and especially in consideration that a proposition of compromise had been thrice made by two preceding administrations to adjust the question on the parallel of 49° . . . I deemed it to be my duty not abruptly to break it off."

Great Britain refused to consider any proposition of compromise settlement that was not based upon a free navigation of the Columbia River, which privilege the President was naturally unwilling to grant. The fourth attempt therefore to adjust the Oregon boundary having failed, a determination to make good the entire claim by force swept over the country, and war seemed inevitable. The President then fell back upon the Monroe Doctrine. In his first annual message to Congress (December 2, 1845), he said: —

Near a quarter of a century ago the principle was distinctly announced to the world, in the annual message of one of my predecessors, that "the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers."

This principle will apply with greatly increased force should any European power attempt to establish any new colony in North America. In the existing circumstances of the world the present is deemed a proper occasion to reiterate and reaffirm the principle avowed by Mr. Monroe and to state my cordial concurrence in its wisdom and sound policy. The reassertion of this principle, especially in reference to North America, is at this day but the promulgation of a policy which no European power should cherish the disposition to resist. Existing rights of every European nation should be respected, but it is due alike to our safety and our interests that the efficient protection of our laws should be extended over our whole territorial limits, and that it should be distinctly announced to the world as our settled policy that no future European colony or dominion shall with our consent be planted or established on any part of the North American continent.

Mr. Polk had no doubt experienced a change of heart since his declaration in Congress during the Panama debate that



the Monroe Doctrine was "viewed, as it should have been, as the mere expression of opinion of the executive . . . designed probably to produce an effect upon the councils of the Holy Alliance in relation to their supposed intention to interfere in the war between Spain and her former colonies. The President had no power to bind the nation by such a pledge."

Had the territory of Oregon been *res nullius*, a domain upon which no claim rested, and therefore open to colonization by any nation according to the terms of international law, the application of the Monroe Doctrine to the case would be clearer. In such event, a foreign power would actually have been seeking colonization upon the American continent, and that part of Monroe's message dealing with colonization would have been violated, had any such attempt to acquire Oregon gone unchallenged by the United States. As it was, both the United States and Great Britain claimed the territory in question. It was not a domain *res nullius*. Great Britain did not seek to extend her dominion, but only to retain what she considered properly belonged to her. Obviously, then, the only settlement of such a question was to be found in a minute comparison of claims, the better one to prevail. In case amicable negotiations failed, an appeal to arms could only be made upon the broad principle of the final resort to settle quarrels.

Happily the controversy was closed by a compromise settlement upon the 49th parallel before the rough arbitrament of war became necessary.

The expressions of President Polk, touching the Monroe Doctrine, as already quoted, modified to some extent the true meaning of the original declaration. The prohibition of European dominion, as well as colonization, would imply that no transfer of territory to European nations could be permitted, even through voluntary conveyance. The acquisition of territory in North America by any means whatsoever was interdicted to foreign powers. He restricted the principle, however, to the North American continent. By his application of this principle in the case of Oregon, an implication follows that no foreign power claiming territory

in North America would be permitted to complete its title, should that title admit of doubt in the United States.

Notwithstanding the positive attitude he thus assumed, the President was nevertheless willing to change his attitude when the compromise offer from England reached Washington, — to partition the Oregon territory north of the Columbia River, over which he believed our title was, “clear and unquestionable.”

A few weeks after the reading of the President’s message, Mr. Allen, of Ohio, in the face of considerable opposition, introduced into the Senate the following resolution: —

RESOLVED, That Congress, thus concurring with the President, and sensible that this subject has been forced upon the attention of the United States by recent events so significant as to make it impossible for this government longer to remain silent, without being ready to submit to and even to invite the enforcement of this dangerous doctrine, do hereby solemnly declare to the civilized world the unalterable resolution of the United States to adhere to and to enforce the principle, that any effort of the powers of Europe to intermeddle in the social organization or political arrangements of the independent nations of America, or further to extend the European system of government upon this continent by the establishment of new colonies, would be incompatible with the independent existence of the nations, and dangerous to the liberties of the people of America, and therefore would incur, as by the right of self-preservation it would justify, the prompt resistance of the United States.

The bill expired in the committee room of foreign affairs when the treaty with England, of June 26, 1846, was concluded, by which the Oregon dispute was settled. Thus an attempt to secure Congressional expression upon the Monroe Doctrine again failed.

IX. YUCATAN

One other event occurred toward the close of Polk’s administration, which is interesting on account of its bearing upon the Monroe Doctrine. In a Senate debate upon the President’s special message of April 29, 1848, relating to

Yucatan, a considerable range of opinion concerning the application of the doctrine was expressed. The speech of John C. Calhoun; made at that time, is an especially valuable contribution to the literature of the subject.

In this message the President submitted to the consideration of Congress certain communications from the governor of Yucatan, setting forth the unfortunate condition to which the country had been reduced by an uprising of the native Indians. The Indians were represented as carrying on a war of extermination against the whites, and the latter, "panic-stricken and destitute of arms," had been brought to a deplorable condition of suffering and misery. In desperation they had appealed to the United States for protection, and offered in return the "dominion and sovereignty of the peninsula." A similar appeal had been made, along with the same offer of sovereignty, to the Spanish and English governments.

The President added: "Whilst it is not my purpose to recommend the adoption of any measure with the view to the acquisition of the 'dominion and sovereignty' over Yucatan, yet, according to our established policy, we could not consent to a transfer of this 'dominion and sovereignty,' either to Spain, Great Britain, or any other European power." Quoting from Monroe's and his own messages of 1823 and 1845, he continues: "Our own security requires that the established policy thus announced should guide our conduct, and this applies with great force to the peninsula of Yucatan. . . . I submit to the wisdom of Congress to adopt such measures as in their judgment may be expedient to prevent Yucatan from becoming a colony of any European power, which in no event could be permitted by the United States. . . ."

Yucatan was a state belonging to Mexico, but her inhabitants remained neutral during the war between the United States and Mexico, then in progress. A bill had been introduced into the Senate to enable the President to order military occupation of Yucatan, which furnished the subject of debate already referred to.

Aside from feelings of humanity, that naturally aroused

Mr. Polk's desire to send prompt relief to a suffering people, he believed that an urgent necessity called upon him to maintain the integrity of the Monroe Doctrine. He believed the doctrine not only forbade foreign interference for purposes of dominion or control, but he further considered that the duty of the United States extended to the prevention of foreign interposition, even when offered in friendly spirit and upon the invitation of American states. John C. Calhoun was then a member of the Senate, and the only survivor of President Monroe's cabinet. In his estimation, the true character of the Monroe Doctrine was misunderstood both by the chief Executive and by the masses of the people. Eminently qualified to speak, he delivered a speech in the Senate, May 15, 1848, carefully reviewing the circumstances under which the declaration of President Monroe was promulgated, and gave as unavoidable deductions a series of conclusions. It is difficult to qualify them.

1. The declaration was made to meet but one special and particular condition, *to wit*;—the threatened interference of the Holy Alliance in Spanish-American affairs, for the purpose of preserving the revolting colonies to Spain, and forcing their continued allegiance to monarchical institutions. The danger soon after ceased to exist, and the warning of the United States, supported by the sympathetic attitude of Great Britain, had served its purpose. That part of the declaration, therefore, must be considered in connection with the circumstances under which it was announced; otherwise it "would have involved the absurdity of asserting that the attempt of any European state to extend its system of government to this continent, the smallest as well as the greatest, would endanger the peace and safety of our country."

2. The next declaration, that the interposition of any European power to oppress the governments of this continent, or to control their destiny in any manner whatever, would be regarded as a manifestation of an unfriendly disposition toward the United States, arose from the same conditions, and "belongs to the history of that day." It was an appendage to the last declaration. The governments referred

to were those just freed from Spain, and the Executive made use of the words "any European power," for the sake of encouraging the young republics.

3. In regard to the use of the word "colonization," as employed by Monroe, it had a specific meaning — "the establishment of a settlement by emigrants from the parent country, in a territory either uninhabited, or from which the inhabitants have been partially or wholly expelled." This part of the doctrine was also directed to a certain source of irritation — Russian colonization on the northwest coast. To include the whole continent as under the ban, was manifestly an impropriety, as a large part of the continent had not asserted nor maintained its independence; British and Russian America then exceeded in area the whole of the United States. This portion of the message originated with Mr. Adams, and had not been freely discussed in the cabinet. "I will venture to say," asserted Mr. Calhoun, "that if that declaration had come before the cautious cabinet, (for Mr. Monroe was among the wisest and most cautious men I have ever known,) it would have been modified and expressed with a far greater degree of precision, and with much more delicacy in reference to the feelings of the British Government."

4. In another respect as well, Mr. Calhoun believed, President Polk did not understand the famous declaration. "They were but declarations, — nothing more. Declarations announcing in a friendly manner to the powers of the world that we should regard certain acts of interposition of the allied powers as dangerous to our peace and safety; interpositions of European powers to oppress the republics which had just arisen upon this continent, having become free and independent, as manifesting an unfriendly disposition, and that this continent having become free and independent, was no longer the subject of colonization — not one word in any one of them in reference to resistance."

5. Our country, then, is not expected inexorably to follow a simple declaration as though it were a fixed principle. Such a course would make the United States a party, willing or unwilling, to all the wars, just or unjust, of the several Ameri-

can states. "We are not to have quoted upon us, on every occasion, general declarations to which any and every meaning may be attached." Whether the country intends to resist by force any interposition from abroad rests with Congress, and must be decided upon the merits of the case itself. It should be asked — does such interposition affect the safety of the country? Is it to the best interests of the nation to resist it, and if so, are our interests involved sufficiently great to make war expedient? In some particular instances this would be proper — proper because wise — and Mr. Calhoun cited the cases of Cuba and Texas. Here he "would resort to the hazard of war with all its calamities." In the case of Yucatan, the only duty devolving upon the United States was to respond to a cry for help.

From this review of the Monroe Doctrine, the following deductions seem to be clear: —

The safety of the United States did not demand the annexation of Yucatan.

The occupation of this country by Great Britain or Spain would not have been for the purpose of dominion. It would have been only the friendly interposition of another power at the solicitation of Yucatan herself.

Occupation of this sort could not properly be called colonization.

The doctrine as enunciated by its authors did not apply in this case.

There was but a slight desire in the United States to annex Yucatan. The country was regarded as practically worthless, and its admission into the Union to be a mistake. It is not easy to determine, however, what final action the Senate might have taken in the matter, had not the incident been closed by a treaty between the whites and the Indians which put an end to their difficulties.

X. THE FRENCH INTERVENTION IN MEXICO

There is no event in the history of the Monroe Doctrine in which the principles it embodies have had such direct and

unquestioned application as in that of the French invasion of Mexico. The circumstances in this case were in many respects strikingly similar to those that called forth the doctrine in 1823. In this instance, the threat from abroad was consummated by an actual landing of European forces upon North American soil for purposes of dominion. The object of this invasion was for the very purpose of establishing monarchical institutions upon the Western Hemisphere, and the territory so invaded, bordering upon the United States, brought the movement well within the threatened line of danger to American interests. All the conditions necessary for an American protest existed. Indeed, the situation in Mexico, brought about by French intrigue, fully justified the action of the United States on primary principles which authorize the use of force in self-defence. The excuse of a national policy to be followed or maintained, could have carried no argument for intervention half so potent. While the Monroe Doctrine, properly considered, is fundamentally a plea for self-protection, there is a magic influence in its phrases which casts a spell upon the American people when they are repeated,—a spell that has at times blinded the eyes to right or wrong in the excess of patriotism it seems to have inspired. In the French invasion of Mexico, the threatened danger to the United States was so real and apparent that no juggling with magical words was necessary to satisfy the national conscience that interposition was necessary; and it will be noted that in all the official despatches relating to this international episode, no mention whatever is made of the Monroe Doctrine, no statement refers to a “well established policy,” no precedent is exhibited, and no offerings are made upon the altar of a “manifest destiny.”

With the establishment of the republic in 1821, Mexico entered upon an era of political convulsion that is probably unparalleled in the annals of any other nation, if the example of turbulent Haiti be excepted. In the course of forty years the fires of as many revolutions were lighted; seventy-two rulers, either monarchical or republican, were seated and deposed. The primary cause of the chronic condition of civil

war which characterized this period of Mexican history is to be found in the controversies between the "clerical" and "liberal" parties of the State.

The Catholic church was supreme in Spain, and its sacred symbols were brought to the New World emblazoned upon the banners of her conquerors; with them Catholicism invaded Mexico, and the Church became the richest and greatest power in the land. The republic inherited a colossal and corrupt ecclesiastical system that fattened upon the enormous wealth of its own landed interests, all of which were exempted from taxation. So great had become the power of the church in the Mexican Republic that it overshadowed all government, civil and military. Through vast accumulation of wealth, and because of its hold upon the minds of a superstitious people, the Catholic church became a wholly tyrannical institution. The Clerical party represented the monarchical, aristocratic, and despotic elements of the nation, while the progressive Liberals stood upon a platform of "equal rights," "freedom of worship," and a general reform of abuses. The bitter struggle between these two parties raged fiercely in 1858-60, with Miramon (Conservative) and Benito Juarez (Liberal) as opposing leaders. The nation had been reduced by ceaseless war to a condition of social and political chaos; guerilla bands wandered about the country upon errands of plunder, and the smaller groups of banditti, like wolves, left the mountains and infested the highways; every semblance of law and order disappeared; murder and pillage were legitimized, and the term "government" was a mockery. These deplorable conditions in Mexico invited foreign intervention because, in the turmoil of constant revolution, Mexico had neglected her international obligations. During the Miramon-Juarez struggles, offers of mediation from England and France were declined by Juarez because he suspected a design to impose monarchical institutions upon Mexico.

In 1861 Juarez emerged from the confusion, triumphant over his enemies, and with the "army of the constitution" he entered the capital. Juarez was always considered a good

leader and a just man ; in many respects he was a remarkable character, whose memory will continue to be cherished in Mexico ; although in control of the government he was quite unable to prevent the disorder and riot which immediately followed his inauguration as president. Foreign intervention again became imminent, and the Conservatives, — or, in other words, those inclined to monarchical institutions — supported by the church, conspired in its favor. The policy of Juarez, to suppress the monasteries, to confiscate the wealth of the clergy, and to guarantee full religious liberty to all, were measures altogether too radical in a country so completely dominated by ecclesiastical orders. Envoys of the Conservatives appeared in Europe, in 1861, to induce Spain to reëstablish an empire in Mexico. Napoleon III of France was also approached, and that ambitious monarch at once grasped this opportunity to launch the great project that lay near his heart ; Earl Russell, on the part of Great Britain, was finally induced to assume, though reluctantly, a share in a tripartite scheme of intervention in Mexico.

France, Spain, and England, no doubt, had each some grounds for interposition. In the case of France, the collection of a debt long overdue gave her, as a creditor government, a right to take action in her own interests. It appears that during his presidency Miramon had issued bonds to the extent of \$15,000,000, realizing upon them, according to his fullest expectations, less than \$1,000,000 in cash ; and the largest holders of this doubtful Mexican paper were French citizens. Juarez, on coming into power, promptly repudiated this debt. Other claims, amounting to many millions of dollars, were suddenly resurrected from the waste basket by the French Government. Their validity had always been questionable, though some of them were, no doubt, just. Spain relied upon a violated treaty to justify her action, and Great Britain found ample cause for armed intervention in certain atrocities committed by Miramon's officers in the British Legation at Mexico. A large sum of money had been stolen from the legation safe, and various English consulates had been sacked ; for these enormities no

redress had been offered by the Mexican Government, and none could be obtained by Great Britain through any means short of force. The three powers, having decided to conduct a joint intervention, signed an agreement in London (October, 1861), declaring that:—

The high contracting parties engaged not to seek for themselves, in the employment of the coercive measures contemplated by the present convention, any acquisition of territory, nor any special advantage, and not to exercise in the internal affairs of Mexico any influence of a nature to prejudice the right of the Mexican nation to choose and to constitute freely the form of its government.

Their purpose was ostensibly to secure payment of their claims, and if necessary, to seize certain Mexican ports, attach their customs receipts, and hold them as a pledge. Accordingly, on the 7th of January, 1862, an allied fleet of the three nations, supplemented by a French military force, appeared at Vera Cruz, and demanded of Juarez, the Liberal leader and president of the republic, immediate payment of the claims against Mexico. Juarez could only assert the inability of his government to meet such demands; he frankly and truthfully stated that the treasury was empty. The allies then proclaimed to the people of Mexico their intention. They had not come, they assured them, for conquest, nor for the purpose of interfering with Mexican politics; furthermore, their intentions were not primarily hostile, — on the contrary, they came with a friendly hand outstretched toward “a people whom Providence had favored with many gifts, but who used their forces and exhausted their vitality in civil wars and perpetual convulsions.” They came merely to obtain reparation for the many grievances which had been inflicted upon their subjects by Mexicans. This declaration sounded well, but the president resented the display of force, and called upon the allies to leave Mexican territory. Ignoring all promises of peace, given in a conference held with Juarez at Soledas, a French determination to press hostilities against Mexico at once be-

came manifest. This sudden determination convinced the English and Spanish commanders in Mexico that their French ally had motives ulterior to those expressed in the conference at London, and that it was contemplating a course of action in which they could take no part. They accordingly withdrew their forces, leaving the French alone. Then, relieved of his allies, the French commander, unmindful of the pledge given by his emperor, and of his own assurances to Mexico, declared war upon the Mexican Government. He issued at the same time a proclamation calling upon all good Mexicans to rally about his standard as it warned all foolhardy ones who should dare to oppose it; with this preliminary flourish he commenced his march to the city of Mexico, expecting an easy and splendid entry. At Puebla, about halfway on his journey to the capital, a Mexican army, under the flag of Juarez, met and defeated the French invaders, obliging the latter to fall back to Orizaba to await reënforcements from home. These, in due time, arrived, with Marshal Forey in command.

Napoleon's instructions to Forey left no further doubt upon the true object of his intervention in Mexico. The emperor was kindly solicitous for the welfare of the Mexicans, but "of course," he wrote, "if they prefer a monarchy, it is to the interest of France to support them in that view. . . . In the present state of civilization of the world, the prosperity of America is not indifferent to Europe; for she it is who feeds our manufacturers and keeps our commerce alive. It is to our interests that the Republic of the United States may be powerful and prosperous, but by no means that she should take all the Gulf of Mexico, and hence command the West Indies, as well as South America, and be the sole dispenser of the products of the New World. . . . If, on the contrary, Mexico conserves her independence and maintains the integrity of her territory; if a suitable government be constituted there, with the assistance of France, we shall have restored to the Latin race, from the other side of the ocean, its strength and prestige; we shall have guaranteed their security to our colonies of the West Indies and those

of Spain ; we shall have established our beneficent influence to the centre of America ; and that influence, by creating immense openings to our commerce, will procure for us the indispensable materials for our industry. Mexico, thus regenerated, will always be favorable to us ; not only by acknowledgment, but also because its interests will be in harmony with ours, and it will find a point of support in its good relations with the European powers. Now, therefore, our military honor pledged, the exigence of our politics, the interest of our industry and our commerce make it our duty to march on Mexico, to plant there boldly our standard, to establish there a monarchy, if it is not incompatible with the national sentiment of the country — but at all events, a government which promises some stability.”

Napoleon III entertained the brilliant project of reëstablishing the power of the Latin race in the Western Hemisphere, and of restoring to France her lost prestige in the Americas. He felt that he alone might be able to accomplish this great achievement. Spain was virtually dead ; her former colonies in Central America had not fulfilled the promises of freedom ; the French were the only branch of the Latin race that had given sufficient evidence of those qualities which insure success and progress ; they alone had lived up to the glorious destinies of the Latins. Upon him, then, rested the burden of quickening to new life the race that was once supreme, but which now bent before the masterful energies of the Anglo-Saxons. Eastern questions belonged to England ; Western questions must look to France for solution. Mexico offered the stage for the first act of his heroic drama. The Clerical party, the monarchists, and the many sympathizers of the old régime in Mexico, would come to his support. He would sweep aside the quarrelling political factions ; he would exterminate the banditti, and found upon the site of the ancient Aztec capitol the seat of a new Latin Empire, which, in the fulness of time, would outshine the old one. The United States and its Monroe Doctrine perhaps stood in his way, but he believed the United States was too busily engaged in its own desper-

ate affairs to seriously trouble him; he realized, however, that he must act with caution, and not unduly alarm the watchful authorities at Washington, — hence, the resurrected French claims, the convention of London, the proclamation of his general in Vera Cruz, and the Soledad Conference. No doubt Napoleon was encouraged by the mild tone of American protest. He had well chosen his time, for at that particular moment it was inexpedient for the United States to make enemies abroad.

Marshal Forey, with his letter of instructions, arrived at Vera Cruz, in September, 1862, and immediately assumed command of a largely augmented French force. After overcoming the resistance of the Mexicans in several hard-fought battles, Forey entered the capital June 10, 1863, and established a provisional government, consisting of a regency, in which he himself was the central figure. A branch of the new government, styled the "Assembly of Notables," lost no time in reporting to Napoleon that the Mexican nation "adopts a monarchical and hereditary form of government under a Catholic prince" who shall take the "title of Emperor" — the choice for ruler being, "His Imperial and Royal Highness, the Prince Ferdinand Maximilian of Austria."

The Archduke, Maximilian of Austria, was a member of the House of Hapsburg, — a man of ambition, of honest intentions, of small political sagacity, and of little experience in worldly affairs. He was a tool in the hands of Napoleon. Before accepting the honor of an emperor's crown in Mexico, he desired undoubted assurance that the choice of himself was in reality the choice of the Mexican people, and Napoleon's officials in Mexico were clever enough to obtain for the archduke every assurance he needed on that score. Finally convinced, and therefore believing himself to have the support of "an immense majority" of Mexicans, he accepted the honor. He was crowned at ^{MISAMAR} ~~Miramon~~, and in June, 1864, was welcomed into the city of Mexico with great demonstrations of joy.

The pleasing personality of the emperor, along with his good sense in recognizing the Liberals in the matter of

appointments, gave to the opening of his reign promises of a most flattering nature. Many influential men among the Liberals, wearied at last with perpetual war, came to his side, believing that possibly, after all, Napoleon had better solved their political problems than they themselves had been able to do. Maximilian in fact became even popular.

However, all the emperor at first gained in the good-will of his subjects, was soon lost by a woful lack of judgment in the management of his imperial office. He fell readily into the hands of the Clerical party, and under the influence of their fawning adulation he entered upon a stupidly blind policy of antagonizing the Liberals at every turn, — those whom he had at first conciliated, and upon whose friendship he most depended. He finally sealed his own doom by the astonishingly foolish error of recalling from exile the notorious generals, Miramon and Marquez, the former leaders of the Conservatives, and whose inhuman and barbarous cruelties on the field of battle had disgusted even their own soldiers. No more flagrant offence could have been offered than the restoration to military power of these two detestable and bloodthirsty men.

An emphatic warning from the United States in April, 1866, caused Napoleon to withdraw the French forces from North America, thereby depriving Maximilian of his only real support. Abandoned to his fate by those who had placed him upon the throne, he carried on a despairing fight against the swelling forces of Juarez, and he finally paid the supreme price of his life for the glories of a four years' reign in Mexico, — a reign that was conceived and conducted in error.

He was executed June 19, 1867.

Bearing in mind the readiness with which the various administrations at Washington had invoked the Monroe Doctrine whenever adjacent territory had been threatened with invasion from abroad, one would naturally expect to find a prompt and decided warning from the United States, when the three allies signed the London Convention, and especially when they appeared a few months later with a demonstration of force at Vera Cruz. Such, however, was not the case.

There were several reasons why President Lincoln and his cabinet chose to adopt a cautious policy. In the first place, the United States had substantial claims of her own against Mexico, and being thoroughly disgusted with the childish follies of her Southern neighbor, had only herself declined to become a party to the London Convention, because of her established policy of non-alliance with foreign powers. The Secretary of State, William H. Seward, had not failed, from the beginning, to obtain the most convincing and satisfactory assurances from France that the object of the intervention was solely for the purpose of collecting a debt, and was in no wise intended to be converted into a political movement. Although the Monroe Doctrine had, on previous occasions, been loosely regarded as a general inhibition against foreign intervention of any kind whatever in the Western continent, a more reasonable construction of Mr. Monroe's words could not give them so broad a meaning. The allies, it was thought, had an undoubted right to use force in the collection of just claims against Mexico, and the United States had no right to interpose so long as her own safety was in no manner involved.

Another reason why Mr. Seward chose to adopt a complacent attitude of neutrality, a course for which he had later to endure the accusation of cowardice, must be taken into account. His responsible position at the head of the Department of State was, at that particular moment, fraught with the greatest difficulties. A mistake in the management of foreign affairs would almost surely have invited disaster, and this particular matter called for the utmost delicacy of diplomatic treatment.

The civil war that had been threatening the United States for a quarter of a century had at last come; any violation of the Monroe Doctrine, however offensive to the people of the United States, would probably have been disregarded because of other and greater dangers. Mr. Seward nevertheless anxiously watched the progress of the allies; he sought constantly to conciliate the three powers, though expressing always his country's displeasure with any foreign meddling

in Mexico which might tend toward an overthrow of its legitimate government. England's attitude toward the United States Government he well knew to be unfriendly, and the unfortunate affair of the *Trent* was fresh in every mind; a further offence to England, under the circumstances, would have been inexpedient and possibly unsafe.

When Napoleon's inner motives came to light, and the English and Spanish withdrew their forces from Vera Cruz, the new danger thrust itself upon the State Department. Success of the Rebellion, and the division of Anglo-Saxon power in America, was clearly in direct line with French interest. That Mr. Seward was fully alive to the dangerous situation is apparent in the cautious tone of his despatches. It was only when Appomattox closed this critical period of American history that the administration was enabled to assume its proper attitude toward the French invasion of Mexico. With a veteran army to back the demand, Napoleon was requested to abandon at once his project in Mexico. The Monroe Doctrine was vindicated.

A few quotations selected from a voluminous mass of official despatches will suffice to indicate the position of the government in this matter, at its various periods, from 1861 to 1866, and to present as well a budget of official literature upon the doctrine under discussion.

When the intervention was first decided upon by the three powers, Mr. Cass, Secretary of State, wrote to Mr. McLane, September 20, 1860 :—

While we do not deny the right of any other power to carry on hostile operations against Mexico, for the redress of its grievances, we firmly object to its holding possession of any part of that country, or endeavoring by force to control its political destiny.

This opposition to foreign interference is known to France, England, and Spain, as well as the determination of the United States to resist any such attempt by all the means in their power. . . . I have already referred to the extent of the principle of foreign interference which we maintain with regard to Mexico. It is proper to add that while that principle denies the right of any power to

hold permanent possession of any part of that country, or to endeavor by force to direct or control its political destiny, it does not call in question its right to carry on hostile operations against that republic for the redress of any real grievances it may have suffered. But we insist that such hostilities be fairly prosecuted for that purpose and be not converted into the means of acquisition or of political contract.

Replying to the invitation extended by the three allies that the United States should become a party to the London Convention, and join them in the recovery of their claims against Mexico, Mr. Seward said : —

. . . the President does not feel himself at liberty to question, and he does not question, that the sovereigns represented have undoubted right to decide for themselves the fact whether they have sustained grievances, and to resort to war against Mexico for the redress thereof, and have a right also to levy the war severally or jointly. The United States have a deep interest, which, however, they are happy to believe is an interest held by them in common with the high contracting powers and with all other civilized states, that neither of the sovereigns by whom the convention has been concluded shall seek or obtain any acquisition of territory or any advantage peculiar to itself . . . or to exercise "any influence of a character to impair the right of the Mexican people to choose and freely to constitute the form of its own government. . . . It is true, as the high contracting parties assume, that the United States have, on their part, claims to urge against Mexico. Upon due consideration, however, the President is of opinion that it would be inexpedient to seek satisfaction of their claims at this time through an act of accession to the convention.

On March 3, 1862, when Napoleon's duplicity had scarcely become suspected, Mr. Seward addressed Mr. Adams, Minister to Great Britain, as follows : —

The President, however, deems it his duty to express to the allies, in all candor and frankness, the opinion that no monarchical government which could be founded in Mexico, in the presence of foreign navies and armies in the waters and upon the soil of Mexico, would have any prospect of security or permanence.

Later in March, 1862, the administration became convinced of Napoleon's real intentions in Mexico, and upon Mr.

Seward fell the burden of opposing French aims without offending the French emperor. It at once became Mr. Seward's object to prevent Great Britain and France from combining in a common cause against the United States. The task of the diplomatist was certainly not an easy one. Both powers were thought to favor the success of Southern arms against the North, and both were actually united in an aggressive movement against Mexico, which was hostile to American interests. At such a moment the observance of a mere political tenet was of little relative importance. The Secretary wrote to Mr. Dayton, Minister to France, March 31, 1862, as follows:—

You will intimate to Mr. Thouvenel that rumors of this kind [that France is a party to the scheme to "subvert the republican American system in Mexico"] have reached the President and awakened some anxiety on his part. You will say that you are not authorized to ask explanations, but you are sure that if any can be made, which will be calculated to relieve that anxiety, they will be very welcome, inasmuch as the United States desire nothing so much as to maintain a good understanding and the most cordial relations with the government and the people of France.

It will hardly be necessary to do more in assigning your reasons for this proceeding on your part than to say that we have more than once, and with perfect distinctness and candor, informed all the parties to the alliance that we cannot look with indifference upon any armed European intervention for political ends in a country situated so near and connected with us so closely as Mexico.

Mr. Seward subsequently explained the mildness of his protest by saying, that "nations, no more than individuals, can wisely divide their attention upon many subjects at one time."¹ The one subject of civil war at home was fully ample to occupy the attention of every branch of the government.

The assurances given that France did not intend to colonize Mexico or to take Sonora or any other section of the country *permanently* enabled the United States Government to defer the definite protest which it held in readiness to pre-

¹ Bancroft's Life of Seward, Vol. 2, p. 425.

sent at a more auspicious moment. To Mr. Motley, Minister to Austria, Mr. Seward wrote, September 11, 1863 : —

When France made war against Mexico, we asked of France explanations of her objects and purposes. She answered, that it was a war for the redress of grievances; that she did not intend to permanently occupy or dominate in Mexico, and that she should leave to the people of Mexico a free choice of institutions of government.

But the vigorous campaign of the French had begun to alarm the people of the United States. Mr. Seward addressed Mr. Dayton, September 21, 1863 : —

. . . The United States government has hitherto practised strict neutrality between the French and Mexico, and all the more cheerfully because it has relied on the assurances given by the French government that it did not intend permanent occupation of that country or any violence to the sovereignty of its people. The proceedings of the French in Mexico are regarded by many in that country and in this as at variance with those assurances. Owing to this circumstance, it becomes very difficult for this government to enforce a rigid observance of its neutrality laws. The President thinks it desirable that you should seek an opportunity to mention these facts to Mr. Drouyn de l'Huys, and to suggest to him that the interests of the United States, and, as it seems to us, the interest of France herself, require that a solution of the present complications in Mexico be made as early as may be convenient upon the basis of the unity and independence of Mexico. I cannot be misinterpreting the sentiments of the United States in saying that they do not desire an annexation of Mexico or any part of it, nor do they desire any special interest, control, or influence there, but they are deeply interested in the reestablishment of unity, peace, and order in the neighboring republic, and exceedingly desirous that there may not arise out of the war in Mexico any cause of alienation between them and France. . . .

A threat is here veiled only by expressions of good-will; but numerous letters written by Mr. Seward to the French Minister about this period, indicate the extreme dissatisfaction felt by the United States Government against France, which was held in restraint only by domestic war at home.

When Drouyn de Lhuys (the French Minister of Foreign Affairs) intimated the emperor's desire for the United States to recognize Maximilian, Mr. Seward adroitly replied that "a determination to err on the side of strict neutrality, if we err at all," was all the emperor could expect of the United States. But he continued more openly : —

Happily the French Government has not been left uninformed that, in the opinion of the United States, the permanent establishment of a foreign and monarchical government in Mexico will be found neither easy nor desirable. You will inform Mr. Drouyn de l'Huys that this opinion remains unchanged. On the other hand, the United States cannot anticipate the action of the people of Mexico, nor have they the least purpose or desire to interfere with their proceedings, or control or interfere with their free choice, or disturb them in the enjoyment of whatever institutions of government they may, in the exercise of an absolute freedom, establish. It is proper, also, that Mr. Drouyn de l'Huys should be informed that the United States continue to regard Mexico as the theatre of a war which has not yet ended in the subversion of the Government long existing there, with which the United States remain in the relation of peace and sincere friendship; and that, for this reason, the United States are not now at liberty to consider the question of recognizing a Government which, in the further chances of war, may come into its place. The United States, consistently with their principles, can do no otherwise than leave the destinies of Mexico in the keeping of her own people, and recognize their sovereignty and independence in whatever form they themselves shall choose that this sovereignty and independence shall be manifested.

With the actual crowning of Maximilian, Congress could not restrain its indignation, nor longer remain silent. Mexican affairs then began to compel consideration in the United States, and even to assume importance superior to the engrossing excitements of the civil war. The press clamored for a positive reassertion of the Monroe Doctrine, and Congress responded to the call, heedless of the consequences.

On April 4, 1864, the House passed the following resolution without a dissenting voice : —

The Congress of the United States are unwilling by silence to have the nations of the world under the impression that they are

indifferent spectators of a deplorable event now transpiring in the republic of Mexico, and they think fit to declare that it does not accord with the policies of the United States to acknowledge any monarchical government erected on the ruins of any republican government in America under the auspices of any European power.

The publication of this act, which represented as truly the feelings of the administration as it did the feelings of the country, came perilously close to causing war between France and the United States—a war which, coming at that time, might have very materially changed the future destinies of the United States. The French Minister for Foreign Affairs demanded of Mr. Dayton, “Do you bring us peace or do you bring us war?”

It required a quick counter-move on the part of Mr. Lincoln and his Secretary of State to repair the dam which Congress had nearly opened to the devouring flood. Mr. Seward hastened to instruct Mr. Dayton to report, “that the proceedings of the House of Representatives were adopted upon suggestions arising within itself, and not upon any communication of the Executive Department, and that the French Government would be seasonably apprised of any change of policy upon the subject which the President might, at any future time, think it proper to adopt;” and to report also that the question of a policy toward Mexico was an executive one unless Congress should agree by a two-thirds vote of both Houses, and that the opinions in the House, as demonstrated by the resolution, were “not in harmony with the policy of neutrality, forbearance, and consideration which the President has so faithfully pursued”

When the Civil War closed the hands of the administration were unloosed, and Mr. Seward was then enabled to assume a more defiant attitude toward French aggression in Mexico, but he hoped nevertheless to accomplish by peaceful means what Generals Grant and Sheridan insisted should be done by the direct threat of military force. In September, 1865, he announced in a firm but conciliatory manner, that as France and the United States had armies confronting each

other on the Mexican frontier, "a time seems to have come when both nations may well consider whether the permanent interests of international peace and friendship do not require the exercise of a thoughtful and serious attention to the political questions to which I have thus reverted."

The "political questions" referred to, were that the United States favored republican institutions on the American continent, and the French did not.

The United States refused to recognize Maximilian's Government; and on December 16, 1865, Mr. Seward gave the direct warning to Napoleon that ended the affair, so far as the Monroe Doctrine was concerned. He instructed Mr. Dayton to announce that:—

It has been the President's purpose that France should be respectfully informed upon two points, namely: first, that the United States earnestly desire to continue and to cultivate sincere friendship with France; secondly, that this policy would be brought into imminent jeopardy unless France could deem it consistent with her interests and honor to desist from the prosecution of armed intervention in Mexico to overthrow the domestic republican government existing there, and to establish upon its ruins the foreign monarchy which has been attempted to be inaugurated in the capital of that country.

With the change of condition in the United States which reunited its strength and gave to it a large veteran army, ready to proceed at once to Mexico, Napoleon saw the downfall of his scheme. He awoke at last from his dream of Western Empire.

With the withdrawal of the French troops from Mexico, a movement was begun in Austria to raise an army to proceed to Mexico in support of the deserted Maximilian. Mr. Seward protested, but upon Austria's proposition to despatch a smaller force, Seward replied that the question of military aid for Maximilian was not to be discussed, and should the Austrian Government persist in its determination, the American Minister to Vienna would be expected to retire. The Austrian project was accordingly abandoned "in consideration of all the . . . circumstances."

Thus closed the episode with a complete vindication of those principles upon which the original Monroe Doctrine was founded, but without mention of the Doctrine itself, and without the slightest allusion to its author. This was the first overt act in American history looking to the establishment of European monarchy on the Western continent; the only case where the threat was made good by actual invasion — the only case, indeed, which really threatened the interests or safety of the United States. Yet the administration, being fully alive to the situation, preferred to justify American intervention upon those broad grounds of self-defence that are recognized by all civilized nations, and accepted by all authorities as sanctioned by the public law. It did not choose to summon specifically the Monroe Doctrine in its defence. No precedent was needed, no appeal to sentiment was necessary, there were no doubters to be soothed or cajoled by magical words. American intervention in Mexico involved no ulterior political schemes which had to be hidden under the cloak of a “national policy,” or clothed with the appearance of right by the sanctity of a popular slogan. The danger to the United States of a new European empire, planted upon her very borders, was too real to call for sleight-of-hand methods to arouse opposition to it. There was no party to be led on by high-sounding phrases.

The principles of the Monroe Doctrine were fully vindicated, as they always must, and always will, be when the proper occasion calls. Those principles belong, not to the United States alone, but to all nations alike. The Monroe Doctrine was not alluded to, because the object of that declaration had long since been fulfilled; because from Mr. Seward’s point of view, if it could be regarded as a “national policy” at all, it had fallen into disgrace; and finally, because a purely national policy can have no authoritative place in international law.

To William H. Seward is due a credit, not generally accorded him, for the able manner in which he defended American interests against the schemes of Napoleon III, also for his skill as a diplomatist in conciliating foreign

enemies to the Northern cause, while he opposed at the same time their advance in Mexico. His adroitness in preventing Great Britain and France finding a common grievance against the United States during the trying period of the Civil War is worthy of great praise. An equal distinction is no less due him for his independence and good judgment in declining to justify his intervention in Mexico on the ground of a domestic political policy when the universal principle of self-defence offered him sufficient argument.

XI. 1866-1896

From the close of the Mexican episode in 1866 to the present day, there has been but one important international question involving the Monroe Doctrine that has given rise to serious discussion,—the case of Venezuela and Great Britain in 1896. From time to time, debates in the Senate concerning the revocation of the Clayton-Bulwer treaty with England (1850) have taken place, in most of which discussions the relation of the doctrine to the policy of American control of an isthmian canal formed a part; but during this period of three decades the country has been singularly free from vexatious diplomatic questions, arising from acts of European aggression upon the Western continents.

President Grant in his second annual message (December 5, 1870) proposed the annexation of Santo Domingo. Among other reasons for taking it, he submitted that if the United States did not acquire the island—the natives being prepared to welcome American sovereignty—“a free port will be negotiated for by European nations in the Bay of Samana.” He declared that “The acquisition of Santo Domingo is an adherence to the Monroe Doctrine; it is a measure of self-protection; it is asserting our just claim to a controlling influence over the great commercial traffic soon to flow from west to east by way of the Isthmus of Darien. . . .”

Like Mexico, the Dominican Republic had led a checkered political career after its declaration of independence in 1844.

In 1861, Pedro Santana, a party leader and prominent revolutionary general, proposed the retrocession of the island to Spain, hoping thereby to secure for its inhabitants freedom from the vexations of continual war.

The United States was just then too busily occupied with home affairs to take very serious notice of Santo Domingo. Nevertheless, hearing of Santana's action, Secretary Seward announced to Spain that "the Government of the United States would regard with grave concern and dissatisfaction, movements in Cuba to introduce Spanish authority within the territory of Dominica." Spain was also much occupied with internal difficulties, yet not wishing to lose so excellent an opportunity to recoup her lost fortunes in the West Indies, she disregarded Mr. Seward's warning and sent a body of troops to Santana's aid. Spain's welcome in Santo Domingo was less cordial than she had been led to expect. The Dominicans waged a relentless guerilla warfare upon the Spanish troops. In 1865, the governor general and his military captain, Maximo Gomez (later of Cuban fame), were obliged to withdraw, with a parting farewell thrust from the Dominicans, to the effect that, "The united Dominican people, without regard to rank or color, have planted the white cross of the Republic upon the principles enunciated by the great mother of free nations, that America belongs to Americans, and we will endure all our trials over again, sooner than desert it."

At the time of President Grant's message, therefore, the Spaniards had abandoned all intention of subjugating the island, and no actual negotiations upon the part of any foreign power had been made, nor were likely to be made, to secure a port within the Bay of Samana. It is difficult, then, to see just how the doctrine applied to the case.

This, as has been already intimated, was not the first perversion of the Monroe Doctrine; President Polk had employed much the same tactics in furthering the annexation of Texas. A stuffed bird in both cases had to be substituted for a living one at which to shoot.

The real merits of the question respecting the annexation

of Santo Domingo had nothing to do with the Monroe doctrine, and the admission of the island into the Union was considered by Congress in reference only to the actual value or worthlessness of the territory. Unfortunately the debate in Congress was so characterized by bitterness of personal feeling and antagonism to the President, that the friends of General Grant felt obliged to withdraw the bill before a vote could be taken upon it.

Shortly after the close of the Civil War a movement was inaugurated in Congress looking to acquisition of territory north of the United States. A series of conflicts between upper and lower Canada had awakened the British Government to the advisability of uniting her Canadian possessions into a single dominion. This was accomplished by what is called the British North American Act. This act united in close ties of confederation the provinces of Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, Manitoba, and British Columbia, with a Parliament at Ottawa. More cordial feelings between the provinces were thus brought about by the acknowledgment of mutual interests and dependence.

In some quarters objections were made in the United States that this act of Great Britain was in violation of the spirit of the Monroe Doctrine, because it seemed to be antagonistic to the proper fulfilment of the destiny of those provinces, which eventually would become a part of the United States. Mr. Seward declared that "British Columbia, by whomsoever possessed, must be governed in conformity with the interests of her people and of society upon the American continent."

Congress also considered a resolution which voiced the uneasiness of the country at witnessing "such a vast conglomeration of American states, established on the monarchical principle, such a proceeding [the confederation] being in contravention of the traditionary and constantly declared principles of the United States, and endangered their most important interests."

In this case, as in the preceding one, the application of

the Monroe Doctrine is not clear. Mr. Monroe expressly stated that, "With the existing colonies or dependencies of any European power we have not interfered and shall not interfere."

Certain political disturbances in South America, from 1864 to 1871, drew from Washington further statements relating to the Monroe Doctrine. An alliance of South American states, including Chili and Peru, were involved in difficulties with Spain, growing out of the unsatisfied claims of Spanish citizens. In the war that followed a Spanish fleet bombarded Valparaiso (March, 1866), and the United States was looked to by the allies for an assertion of the Monroe Doctrine. Mr. Seward wrote to Mr. Kirkpatrick, the American Envoy to Chili (June 2, 1866) that the Government of the United States will "maintain and insist with all the decision and energy which are compatible with our existing neutrality that the republican system which is accepted by any one of those [South American] states shall not be wantonly assailed, and that it shall not be subverted as an end of a lawful war by European powers." However, Mr. Seward declared it was not the intention of the United States to go beyond this position. In South American wars, where European powers did not seek the establishment of monarchical government, the United States could not be expected to take part.

In the early part of 1895 Great Britain was moved to indignation by the arrest and forcible detention by Nicaraguan authorities of Mr. Hatch, the acting British Consul, and certain other British subjects in the Mosquito Reservation. These men were denied a trial, and summarily expelled from Nicaraguan territory. Nicaragua alleged that they had instigated riots against her sovereignty in Mosquitia, but she failed to give the prisoners a hearing before a court of justice. Great Britain at once presented a claim of 15,000 pounds sterling, and receiving no satisfactory promise of payment from Managua, promptly sent a war vessel to Corinto to enforce her demands.

Nicaragua appealed to the United States. Mr. Gresham

replied that Nicaragua must deal directly with Great Britain. In a telegram of April 24, to Mr. Bayard in London, he said: "The President advises that you say unofficially and confidentially to Lord Kimberley, that while disclaiming any right to interfere in pending settlement of claim for pecuniary reparation, compliance with Nicaragua's request [extension of time for payment] would avoid embarrassment to commerce of this and other countries, and be very satisfactory to the United States."

This, Lord Kimberley willingly granted, and the claim was soon after settled.

Commenting upon this episode, the President in his annual message the following December, said: "While the sovereignty and jurisdiction of Nicaragua was in no way questioned by Great Britain, the former's arbitrary conduct in regard to British subjects furnished the ground for this proceeding [seizure of Corinto]."

The landing of an armed British force in Central America provoked considerable comment in the press throughout the country concerning the duty and probable action of the United States. The matter was closed, however, without an official appeal to the doctrine.

XII. GREAT BRITAIN AND VENEZUELA

The latest application of the Monroe Doctrine by our government was made in 1895-96. In his third annual message (December 2, 1895), President Cleveland used the following words: —

It being apparent that the boundary dispute between Great Britain and the Republic of Venezuela concerning the limits of British Guiana was approaching an acute stage, a definite statement of the interest and policy of the United States as regards the controversy seemed to be required both on its own account and in view of its relations with the friendly powers directly concerned. In July last, therefore, a despatch was addressed to our Ambassador at London for communication to the British Government in which the attitude of the United States was fully and

distinctly set forth. The general conclusions therein reached and formulated are in substance that the traditional and established policy of this government is firmly opposed to a forcible increase by any European power of its territorial possessions on this continent; that this policy is as well founded in principle as it is strongly supported by numerous precedents; that as a consequence the United States is bound to protest against the enlargement of the area of British Guiana in derogation of the rights and against the will of Venezuela; that considering the disparity in strength of Great Britain and Venezuela the territorial dispute between them can be reasonably settled only by friendly and impartial arbitration, and that the resort to such arbitration should include the whole controversy. . . .

It had long been known in the United States that there existed a boundary dispute between Great Britain and Venezuela, but in view of the fact that many of the boundary lines in South America were vaguely defined and had for many years caused more or less irritation between the South American republics, the settlement of this particular one was not considered important to American interest. This was the case even regardless of the fact that one of the contestants represented a European power. The dispute between Great Britain and Venezuela originated in conflicting Dutch and Spanish territorial claims in the northeastern part of the South American continent, — England being the successor of the Dutch in Guiana, while Venezuela based her claims upon Spanish title. It became apparent in 1840 that these early territorial claims were in conflict. Unsuccessful attempts to define the lines characterized half a century of correspondence between the rival claimants. From time to time, as the territory in dispute became better known to settlers, the quarrel broke out anew, but as often to be abandoned on failure of an understanding.

In 1876, Venezuela called the attention of the United States to the alleged encroachments of British Guiana upon her soil, laying especial emphasis upon English advances in the region lying about the mouth of the Orinoco River. From that time to 1895, Venezuela upon several occasions

had urged the United States as the "oldest of the republics of the new continent," and therefore the one called upon "to lend the others its powerful moral support in disputes with European nations," to intercede in its behalf. Without exception, the replies from Washington expressed sympathy with Venezuela in her controversy. In some instances assurances were given that if Great Britain were wrongfully seeking to extend the lines of her Guiana colony, such action would be regarded by the United States as an unjustifiable encroachment upon the Western Hemisphere, and therefore a subject coming clearly within the scope of the Monroe Doctrine. Moved by these representations, Mr. Frelinghuysen, in 1882, had offered to propose to Great Britain a submission of the question to the arbitrament of a third power, should Venezuela so request. In a letter to Mr. Baker, American Minister resident at Caracas (January 31, 1883), he outlined the attitude of the United States — one of strict impartiality, but favorable to the employment of good offices toward inclining Great Britain to arbitrate. There was a word of caution to Mr. Lowell, the American Minister in London (July 7, 1884), not to commit the United States "to any determinate political solution" of the question, which at that time indicated clearly the conservative attitude of the government. In this letter Mr. Frelinghuysen stated that "The moral position of the United States in these matters [alleged foreign encroachments in the Americas] was well known through the enunciation of the Monroe Doctrine, but formal action in the direction of applying that doctrine to a speculative case affecting Venezuela seemed to be inopportune, and I could not advise Venezuela to arouse a discussion of the point."

Venezuela readily accepted the arbitration proposals of the United States, but not without some show of embarrassment. Should the United States use its good offices in an endeavor to incline Great Britain to submit the matter to the arbitrament of a third power, the United States, therefore, as mediator in the case, would likely be

debarred from acting in the capacity of umpire; and the United States alone was acceptable as an umpire to Venezuela. On the other hand, while the United States was perfectly willing to name an umpire, it could not do so with propriety, unless a concurrent request came from both parties to the dispute.

Further English advances near the mouth of the Orinoco River in 1886 were viewed with alarm and dismay, and war was almost precipitated by the despatch of a Venezuelan gunboat to Barima Point with engineers and equipment to construct a lighthouse in that locality of disputed ownership. At this same time a Venezuelan note was addressed to the British authorities that should Great Britain object to this assertion of sovereignty over Barima, diplomatic relations between the two nations would instantly cease. Even at this critical juncture, public interest in the United States was not greatly moved. Mr. Bayard, voicing his friendly concern in the adjustment of the dispute, felt warranted in tendering to the British Government the good offices of the United States, in an endeavor to promote an amicable settlement of the respective claims, with which the secretary coupled an offer to act as arbitrator, should such proposal prove acceptable to both countries. In a communication to Mr. Phelps, December 30, 1886, Mr. Bayard touched upon the responsibility of the United States in relation to the South American republics, in which he mentioned "the doctrine we announced two generations ago"; such responsibility he declared to be entirely consistent and compatible with an "attitude of friendly neutrality and entire impartiality." He said further: "It is not supposed for a moment that any idea of political or territorial expansion of authority on the American continent can control Her Majesty's counsellors in any action they may take in relation to Venezuela. . . . The dispute with Venezuela is merely one of geographical limits and title, not of attempted political jurisdiction."

With the clash of authority at Barima Point, Venezuela assumed a more aggressive attitude toward Great Britain.

Her Minister in Washington constantly reminded Mr. Bayard of the Monroe Doctrine. "The violation of the territory of Venezuela," he urged, "has been gradually accomplished by means and under pretences which, in view of the antecedents of the case, appear scarcely credible. The representative of Great Britain at Caracas formally declared, in 1850, that the acquisition which has now been so tenaciously insisted upon, was not even thought of. By this acquisition, Great Britain gains possession of territories which she did not formerly pretend to claim, and violates the stipulations made with Venezuela in the convention signed at that time through reliance on the sincerity of those declarations."

Great Britain declined to accept the friendly offices of the United States, and the British Minister at Caracas secured his passport preparatory to abandoning his diplomatic post. English men-of-war appeared in the Orinoco and at La Guira, and for the moment war seemed inevitable. Just at this anxious moment of suspense the unfortunate boundary dispute was more than ever complicated by the discovery of gold in the interior district of Caratal, — a region claimed by Venezuela, and now suddenly occupied by British miners, who, with the usual independence of gold miners, refused to recognize any sovereignty but their own. The matter was still further aggravated by the firmer attitude assumed toward Great Britain in Washington. Mr. Bayard wrote to Mr. Phelps, February 17, 1888: "The Government of the United States has hitherto taken an earnest and friendly interest in the question of boundaries so long in dispute between Great Britain and Venezuela, and, so far as its disinterested counsels were admissible, has advocated an amicable, final, and honorable settlement of the dispute. We have followed this course on the assumption that the issue was one of historical fact, eminently adaptable for admitting arbitration, and that the territorial claims of each party had a fixed limit, the right to which would without difficulty be determined according to the evidence. The claim now stated to have been put forth by the authorities of British Guiana necessarily gives rise to grave disquietude, and creates

an apprehension that the territorial claim does not follow historical traditions or evidence, but is apparently indefinite. . . . It may be well for you to express anew to Lord Salisbury the great gratification it would afford this government to see the Venezuelan dispute amicably and honorably settled, by arbitration or otherwise, and our readiness to do anything we properly can to assist in that end."

In the spring of 1888 Congress called for the correspondence relating to the Venezuelan controversy, and thus the matter came more prominently before the country. Although the subject was duly discussed by the press, even then it did not occur to the people of the United States that the question of a South American boundary could, to any very great or serious extent, affect American interests.

From 1888 to December, 1895, amicable relations between Venezuela and Great Britain were greatly disturbed, although diplomatic intercourse was resumed in the form of several special Venezuelan envoys to London, who labored earnestly, though in vain, for a friendly adjustment of the boundary difficulties. During this period of seven years British subjects continued to emigrate to the Caratal gold district, where they founded numerous settlements, and so far won the confidence of the native Indian tribes that the latter were often willing to unite with them in forcibly resisting Venezuelan authority. In the year 1895 the boundary dispute had again reached a dangerous crisis, owing to some hostile encounters, within the disputed area, between British settlers and the Venezuelan police. Venezuela's appeals to the United States for protection were so persistent that President Cleveland was finally induced to step into the arena. A somewhat vigorous correspondence took place between Washington and London, the burden of the discussion between Mr. Olney and Lord Salisbury being the applicability of the Monroe Doctrine to the case.

The annual message of the President (1895) was followed, two weeks later (December 17), by a special message to Congress, submitting the Olney-Salisbury letters, and further sustaining, in argumentative form, the attitude which the

administration had seen fit to take. Then, for the first time, the whole tangled question came before the American people as a matter of vital importance. For several months it was the absorbing topic of the press. The journals bristled with inflammatory editorials. England was roundly denounced as a nation of robbers and the natural enemy of the United States. The usually quiet antipathy to Great Britain, which would seem to be an inherited American instinct, suddenly came to the surface, and the people of the country called for a prompt vindication of the Monroe Doctrine. An intensity of bitter feeling against England was excited, pointing ominously to armed conflict; while the more conservative elements of the country stood amazed and alarmed at the seriousness of the situation.

The position taken by Mr. Olney was substantially as follows: If Great Britain were encroaching upon Venezuela, as Venezuela alleged, by an unwarranted extension of her Guiana boundary, such British aggression constituted an attempt to extend the sovereignty of a European power, along with its system of government, to a portion of the American continent; an act which clearly fell within the interdiction of the Monroe Doctrine. The only way to determine whether Great Britain was merely occupying territory that rightfully belonged to her, or whether she was seeking to extend her sovereignty, was by means of a careful examination and comparison of the historical evidences that supported the conflicting claims; therefore the United States must insist that the matter be submitted to a tribunal of arbitration. Should such a tribunal find that the British claims to the disputed territory were just, the whole matter would fall outside the operation of the Monroe Doctrine, and the United States would hold her peace; but, on the contrary, should such a tribunal find that Great Britain was seeking to appropriate territory belonging of right to Venezuela, then it would become the duty of the United States, in the interest of her own safety, and in conformity with a great principle, to oppose such an advance by every means in her power.

The British position was, in substance, that the Monroe Doctrine had no bearing upon the boundary dispute in South America; that that doctrine had been created to meet certain ends, and had long since fulfilled its purpose; that the interest and safety of the United States was in no manner threatened; and, therefore, the British-Venezuela quarrel being no affair of the United States, the intervention of the latter was wholly unwarranted.

The two letters of Secretary Olney and Lord Salisbury on this subject are most important documents in the historical development of the Monroe Doctrine, and free quotation from them cannot well be avoided. Only those parts of the letters relating to the merits of the territorial claims are omitted.

Mr. Olney to Mr. Bayard.

No. 804.]

DEPARTMENT OF STATE,
Washington, July 20, 1895.

His Excellency THOMAS F. BAYARD,
Etc., etc., etc., London.

SIR: I am directed by the President to communicate to you his views upon a subject to which he has given much anxious thought and respecting which he has not reached a conclusion without a lively sense of its great importance as well as of the serious responsibility involved in any action now to be taken.

It is not proposed, and for present purposes is not necessary, to enter into any detailed account of the controversy between Great Britain and Venezuela respecting the western frontier of the colony of British Guiana. The dispute is of ancient date and began at least as early as the time when Great Britain acquired by the treaty with the Netherlands of 1814 "the establishments of Demerara, Essequibo, and Berbice." From that time to the present the dividing line between these "establishments" (now called British Guiana) and Venezuela has never ceased to be a subject of contention. The claims of both parties, it must be conceded, are of a somewhat indefinite nature. On the one hand Venezuela, in every constitution of government since she became an independent State, has declared her territorial limits to be those of the Captaincy General of Venezuela in 1810. Yet, out of "moderation and prudence," it is said, she has contented her-

self with claiming the Essequibo line — the line of the Essequibo River, that is — to be the true boundary between Venezuela and British Guiana. On the other hand, at least an equal degree of indefiniteness distinguishes the claim of Great Britain. . . .

To the territorial controversy between Great Britain and the Republic of Venezuela, thus briefly outlined, the United States has not been and, indeed, in view of its traditional policy, could not be indifferent. The note to the British Foreign Office by which Venezuela opened negotiations in 1876 was at once communicated to this Government. In January, 1881, a letter of the Venezuelan Minister at Washington, respecting certain alleged demonstrations at the mouth of the Orinoco, was thus answered by Mr. Evarts, then Secretary of State: . . .

Subsequent communications to Mr. Bayard direct him to ascertain whether a Minister from Venezuela would be received by Great Britain. In the annual Message to Congress of December 3d last, the President used the following language:

“The boundary of British Guiana still remains in dispute between Great Britain and Venezuela. Believing that its early settlement, on some just basis alike honorable to both parties, is in the line of our established policy to remove from this hemisphere all causes of difference with powers beyond the sea, I shall renew the efforts heretofore made to bring about a restoration of diplomatic relations between the disputants and to induce a reference to arbitration, a resort which Great Britain so conspicuously favors in principle and respects in practice and which is earnestly sought by her weaker adversary.”

And February 22, 1895, a joint resolution of Congress declared “That the President’s suggestion . . . that Great Britain and Venezuela refer their dispute as to boundaries to friendly arbitration be earnestly recommended to the favorable consideration of both parties in interest.”

The important features of the existing situation, as shown by the foregoing recital, may be briefly stated.

1. The title to territory of indefinite but confessedly very large extent is in dispute between Great Britain on the one hand and the South American Republic of Venezuela on the other.

2. The disparity in the strength of the claimants is such that Venezuela can hope to establish her claim only through peaceful methods — through an agreement with her adversary either upon the subject itself or upon an arbitration.

3. The controversy, with varying claims on the part of Great Britain, has existed for more than half a century, during which

period many earnest and persistent efforts of Venezuela to establish a boundary by agreement have proved unsuccessful.

4. The futility of the endeavor to obtain a conventional line being recognized, Venezuela for a quarter of a century has asked and striven for arbitration.

5. Great Britain, however, has always and continuously refused to arbitrate, except upon the condition of a renunciation of a large part of the Venezuelan claim and of a concession to herself of a large share of the territory in controversy.

6. By the frequent interposition of its good offices at the instance of Venezuela, by constantly urging and promoting the restoration of diplomatic relations between the two countries, by pressing for arbitration of the disputed boundary, by offering to act as arbitrator, by expressing its grave concern whenever new alleged instances of British aggression upon Venezuelan territory have been brought to its notice, the Government of the United States has made it clear to Great Britain and to the world that the controversy is one in which both its honor and its interests are involved and the continuance of which it cannot regard with indifference.

The accuracy of the foregoing analysis of the existing status cannot, it is believed, be challenged. It shows that status to be such that those charged with the interests of the United States are now forced to determine exactly what those interests are and what course of action they require. It compels them to decide to what extent, if any, the United States may and should intervene in a controversy between and primarily concerning only Great Britain and Venezuela and to decide how far it is bound to see that the integrity of Venezuelan territory is not impaired by the pretensions of its powerful antagonist. Are any such right and duty devolved upon the United States? If not, the United States has already done all, if not more than all, that a purely sentimental interest in the affairs of the two countries justifies, and to push its interposition further would be unbecoming and undignified and might well subject it to the charge of impertinent intermeddling with affairs with which it has no rightful concern. On the other hand, if any such right and duty exist, their due exercise and discharge will not permit of any action that shall not be efficient and that, if the power of the United States is adequate, shall not result in the accomplishment of the end in view. The question thus presented, as matter of principle and regard being had to the settled national policy, does not seem difficult of solution. Yet the momentous practical consequences dependent upon its determination require that it should be carefully con-

sidered and that the grounds of the conclusion arrived at should be fully and frankly stated.

That there are circumstances under which a nation may justly interpose in a controversy to which two or more other nations are the direct and immediate parties is an admitted canon of international law. The doctrine is ordinarily expressed in terms of the most general character and is perhaps incapable of more specific statement. It is declared in substance that a nation may avail itself of this right whenever what is done or proposed by any of the parties primarily concerned is a serious and direct menace to its own integrity, tranquillity, or welfare. The propriety of the rule when applied in good faith will not be questioned in any quarter. On the other hand, it is an inevitable though unfortunate consequence of the wide scope of the rule that it has only too often been made a cloak for schemes of wanton spoliation and aggrandizement. We are concerned at this time, however, not so much with the general rule as with a form of it which is peculiarly and distinctively American. Washington, in the solemn admonitions of the Farewell Address, explicitly warned his countrymen against entanglements with the politics or the controversies of European powers.

“Europe has a set of primary interests which to us have none or a very remote relation. Hence she must be engaged in frequent controversies the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves by artificial ties in the ordinary vicissitudes of her politics or the ordinary combinations and collisions of her friendships or enmities. Our detached and distant situation invites and enables us to pursue a different course.”

During the administration of President Monroe this doctrine of the Farewell Address was first considered in all its aspects and with a view to all its practical consequences. The Farewell Address, while it took America out of the field of European politics, was silent as to the part Europe might be permitted to play in America. Doubtless it was thought the latest addition to the family of nations should not make haste to prescribe rules for the guidance of its older members, and the expediency and propriety of serving the powers of Europe with notice of a complete and distinctive American policy excluding them from interference with American political affairs might well seem dubious to a generation to whom the French alliance, with its manifold advantages to the cause of American independence, was fresh in mind.

Twenty years later, however, the situation had changed. The lately born nation had greatly increased in power and resources, had demonstrated its strength on land and sea and as well in the conflicts of arms as in the pursuits of peace, and had begun to realize the commanding position on this continent which the character of its people, their free institutions, and their remoteness from the chief scene of European contentions combined to give to it. The Monroe administration therefore did not hesitate to accept and apply the logic of the Farewell Address by declaring in effect that American non-intervention in European affairs necessarily implied and meant European non-intervention in American affairs. Conceiving unquestionably that complete European non-interference in American concerns would be cheaply purchased by complete American non-interference in European concerns, President Monroe, in the celebrated Message of December 2, 1823, used the following language: . . .

The Monroe administration, however, did not content itself with formulating a correct rule for the regulation of the relations between Europe and America. It aimed at also securing the practical benefits to result from the application of the rule. Hence the message just quoted declared that the American continents were fully occupied and were not the subjects for future colonization by European powers. To this spirit and this purpose, also, are to be attributed the passages of the same message which treat any infringement of the rule against interference in American affairs on the part of the powers of Europe as an act of unfriendliness to the United States. It was realized that it was futile to lay down such a rule unless its observance could be enforced. It was manifest that the United States was the only power in this hemisphere capable of enforcing it. It was therefore courageously declared not merely that Europe ought not to interfere in American affairs, but that any European power doing so would be regarded as antagonizing the interests and inviting the opposition of the United States.

That America is in no part open to colonization, though the proposition was not universally admitted at the time of its first enunciation, has long been universally conceded. We are now concerned, therefore, only with that other practical application of the Monroe doctrine the disregard of which by an European power is to be deemed an act of unfriendliness towards the United States. The precise scope and limitations of this rule cannot be too clearly apprehended. It does not establish any general protectorate by the United States over other American states. It does not relieve any American state from its obligations as fixed

by international law nor prevent any European power directly interested from enforcing such obligations or from inflicting merited punishment for the breach of them. It does not contemplate any interference in the internal affairs of any American state or in the relations between it and other American states. It does not justify any attempt on our part to change the established form of government of any American state or to prevent the people of such state from altering that form according to their own will and pleasure. The rule in question has but a single purpose and object. It is that no European power or combination of European powers shall forcibly deprive an American state of the right and power of self-government and of shaping for itself its own political fortunes and destinies.

That the rule thus defined has been the accepted public law of this country ever since its promulgation cannot fairly be denied. Its pronouncement by the Monroe administration at that particular time was unquestionably due to the inspiration of Great Britain, who at once gave to it an open and unqualified adherence which has never been withdrawn. But the rule was decided upon and formulated by the Monroe administration as a distinctively American doctrine of great import to the safety and welfare of the United States after the most careful consideration by a Cabinet which numbered among its members John Quincy Adams, Calhoun, Crawford, and Wirt, and which before acting took both Jefferson and Madison into its counsels. Its promulgation was received with acclaim by the entire people of the country irrespective of party. Three years after, Webster declared that the doctrine involved the honor of the country. "I look upon it," he said, "as part of its treasures of reputation, and for one I intend to guard it," and he added,

"I look on the message of December, 1823, as forming a bright page in our history. I will help neither to erase it nor to tear it out; nor shall it be by any act of mine blurred or blotted. It did honor to the sagacity of the Government, and I will not diminish that honor."

Though the rule thus highly eulogized by Webster has never been formally affirmed by Congress, the House in 1864 declared against the Mexican monarchy sought to be set up by the French as not in accord with the policy of the United States, and in 1889 the Senate expressed its disapproval of the connection of any European power with a canal across the Isthmus of Darien or Central America. It is manifest that, if a rule has been openly

and uniformly declared and acted upon by the executive branch of the Government for more than seventy years without express repudiation by Congress, it must be conclusively presumed to have its sanction. Yet it is certainly no more than the exact truth to say that every administration since President Monroe's has had occasion, and sometimes more occasions than one, to examine and consider the Monroe doctrine and has in each instance given it emphatic endorsement. Presidents have dwelt upon it in messages to Congress and Secretaries of State have time after time made it the theme of diplomatic representation. Nor, if the practical results of the rule be sought for, is the record either meagre or obscure. Its first and immediate effect was indeed most momentous and far reaching. It was the controlling factor in the emancipation of South America and to it the independent states which now divide that region between them are largely indebted for their very existence. Since then the most striking single achievement to be credited to the rule is the evacuation of Mexico by the French upon the termination of the civil war. But we are also indebted to it for the provisions of the Clayton-Bulwer treaty, which both neutralized any interoceanic canal across Central America and expressly excluded Great Britain from occupying or exercising any dominion over any part of Central America. It has been used in the case of Cuba as if justifying the position that, while the sovereignty of Spain will be respected, the island will not be permitted to become the possession of any other European power. It has been influential in bringing about the definite relinquishment of any supposed protectorate by Great Britain over the Mosquito Coast.

President Polk, in the case of Yucatan and the proposed voluntary transfer of that country to Great Britain or Spain, relied upon the Monroe doctrine, though perhaps erroneously, when he declared in a special message to Congress on the subject that the United States could not consent to any such transfer. Yet, in somewhat the same spirit, Secretary Fish affirmed in 1870 that President Grant had but followed "the teachings of all our history" in declaring in his annual message of that year that existing dependencies were no longer regarded as subject to transfer from one European power to another, and that when the present relation of colonies ceases they are to become independent powers. Another development of the rule, though apparently not necessarily required by either its letter or its spirit, is found in the objection to arbitration of South American controversies by an European power. American questions, it is said, are for American decision, and on that ground the United States went so far as

to refuse to mediate in the war between Chili and Peru jointly with Great Britain and France. Finally, on the ground, among others, that the authority of the Monroe doctrine and the prestige of the United States as its exponent and sponsor would be seriously impaired, Secretary Bayard strenuously resisted the enforcement of the Pelletier claim against Hayti.

“The United States, [he said,] has proclaimed herself the protector of this western world, in which she is by far the stronger power, from the intrusion of European sovereignties. She can point with proud satisfaction to the fact that over and over again has she declared effectively, that serious indeed would be the consequences if European hostile foot should, without just cause, tread those states in the New World which have emancipated themselves from European control. She has announced that she would cherish as it becomes her the territorial rights of the feeblest of those states, regarding them not merely as in the eye of the law equal to even the greatest of nationalities, but in view of her distinctive policy as entitled to be regarded by her as the objects of a peculiarly gracious care. I feel bound to say that if we should sanction by reprisals in Hayti the ruthless invasion of her territory and insult to her sovereignty which the facts now before us disclose, if we approve by solemn Executive action and Congressional assent that invasion, it will be difficult for us hereafter to assert that in the New World, of whose rights we are the peculiar guardians, these rights have never been invaded by ourselves.”

The foregoing enumeration not only shows the many instances wherein the rule in question has been affirmed and applied, but also demonstrates that the Venezuelan boundary controversy is in any view far within the scope and spirit of the rule as uniformly accepted and acted upon. A doctrine of American public law thus long and firmly established and supported could not easily be ignored in a proper case for its application, even were the considerations upon which it is founded obscure or questionable. No such objection can be made, however, to the Monroe doctrine understood and defined in the manner already stated. It rests, on the contrary, upon facts and principles that are both intelligible and incontrovertible. That distance and three thousand miles of intervening ocean make any permanent political union between an European and an American state unnatural and inexpedient will hardly be denied. But physical and geographical considerations are the least of the objections to such a union. Europe, as Washington observed, has a set of primary interests which are

peculiar to herself. America is not interested in them and ought not to be vexed or complicated with them. Each great European power, for instance, to-day maintains enormous armies and fleets in self-defence and for protection against any other European power or powers. What have the states of America to do with that condition of things, or why should they be impoverished by wars or preparations for wars with whose causes or results they can have no direct concern? If all Europe were to suddenly fly to arms over the fate of Turkey, would it not be preposterous that any American state should find itself inextricably involved in the miseries and burdens of the contest? If it were, it would prove to be a partnership in the cost and losses of the struggle but not in any ensuing benefits.

What is true of the material, is no less true of what may be termed the moral interests involved. Those pertaining to Europe are peculiar to her and are entirely diverse from those pertaining and peculiar to America. Europe as a whole is monarchical, and, with the single important exception of the Republic of France, is committed to the monarchical principle. America, on the other hand, is devoted to the exactly opposite principle—to the idea that every people has an inalienable right of self-government—and, in the United States of America, has furnished to the world the most conspicuous and conclusive example and proof of the excellence of free institutions, whether from the standpoint of national greatness or of individual happiness. It cannot be necessary, however, to enlarge upon this phase of the subject—whether moral or material interests be considered, it cannot but be universally conceded that those of Europe are irreconcilably diverse from those of America, and that any European control of the latter is necessarily both incongruous and injurious. If, however, for the reasons stated the forcible intrusion of European powers into American politics is to be deprecated—if, as it is to be deprecated, it should be resisted and prevented—such resistance and prevention must come from the United States. They would come from it, of course, were it made the point of attack. But, if they come at all, they must also come from it when any other American state is attacked, since only the United States has the strength adequate to the exigency.

Is it true, then, that the safety and welfare of the United States are so concerned with the maintenance of the independence of every American state as against any European power as to justify and require the interposition of the United States whenever that independence is endangered? The question can be candidly answered in but one way. The states of America, South as well

as North, by geographical proximity, by natural sympathy, by similarity of governmental constitutions, are friends and allies, commercially and politically, of the United States. To allow the subjugation of any of them by an European power is, of course, to completely reverse that situation and signifies the loss of all the advantages incident to their natural relations to us. But that is not all. The people of the United States have a vital interest in the cause of popular self-government. They have secured the right for themselves and their posterity at the cost of infinite blood and treasure. They have realized and exemplified its beneficent operation by a career unexampled in point of national greatness or individual felicity. They believe it to be for the healing of all nations, and that civilization must either advance or retrograde accordingly as its supremacy is extended or curtailed. Imbued with these sentiments, the people of the United States might not impossibly be wrought up to an active propaganda in favor of a cause so highly valued both for themselves and for mankind. But the age of the Crusades has passed, and they are content with such assertion and defence of the right of popular self-government as their own security and welfare demand. It is in that view more than in any other that they believe it not to be tolerated that the political control of an American state shall be forcibly assumed by an European power.

The mischiefs apprehended from such a source are none the less real because not immediately imminent in any specific case, and are none the less to be guarded against because the combination of circumstances that will bring them upon us cannot be predicted. The civilized states of Christendom deal with each other on substantially the same principles that regulate the conduct of individuals. The greater its enlightenment, the more surely every state perceives that its permanent interests require it to be governed by the immutable principles of right and justice. Each, nevertheless, is only too liable to succumb to the temptations offered by seeming special opportunities for its own aggrandizement, and each would rashly imperil its own safety were it not to remember that for the regard and respect of other states it must be largely dependent upon its own strength and power. To-day the United States is practically sovereign on this continent, and its fiat is law upon the subjects to which it confines its interposition. Why? It is not because of the pure friendship or good will felt for it. It is not simply by reason of its high character as a civilized state; nor because wisdom and justice and equity are the invariable characteristics of the dealings of the United States. It is because, in addition to all other grounds, its infinite resources

combined with its isolated position render it master of the situation and practically invulnerable as against any or all other powers.

All the advantages of this superiority are at once imperilled if the principle be admitted that European powers may convert American states into colonies or provinces of their own. The principle would be eagerly availed of, and every power doing so would immediately acquire a base of military operations against us. What one power was permitted to do could not be denied to another, and it is not inconceivable that the struggle now going on for the acquisition of Africa might be transferred to South America. If it were, the weaker countries would unquestionably be soon absorbed, while the ultimate result might be the partition of all South America between the various European powers. The disastrous consequences to the United States of such a condition of things are obvious. The loss of prestige, of authority, and of weight in the councils of the family of nations, would be among the least of them. Our only real rivals in peace as well as enemies in war would be found located at our very doors. Thus far in our history we have been spared the burdens and evils of immense standing armies and all the other accessories of huge warlike establishments, and the exemption has largely contributed to our national greatness and wealth as well as to the happiness of every citizen. But, with the powers of Europe permanently encamped on American soil, the ideal conditions we have thus far enjoyed cannot be expected to continue. We too must be armed to the teeth, we too must convert the flower of our male population into soldiers and sailors, and by withdrawing them from the various pursuits of peaceful industry we too must practically annihilate a large share of the productive energy of the nation.

How a greater calamity than this could overtake us it is difficult to see. Nor are our just apprehensions to be allayed by suggestions of the friendliness of European powers — of their good will towards us — of their disposition, should they be our neighbors, to dwell with us in peace and harmony. The people of the United States have learned in the school of experience to what extent the relations of states to each other depend not upon sentiment nor principle, but upon selfish interest. They will not soon forget that, in their hour of distress, all their anxieties and burdens were aggravated by the possibility of demonstrations against their national life on the part of powers with whom they had long maintained the most harmonious relations. They have yet in mind that France seized upon the apparent opportunity of our civil war to set up a monarchy in the adjoining state of Mexico.

They realize that had France and Great Britain held important South American possessions to work from and to benefit, the temptation to destroy the predominance of the Great Republic in this hemisphere by furthering its dismemberment might have been irresistible. From that grave peril they have been saved in the past and may be saved again in the future through the operation of the sure but silent force of the doctrine proclaimed by President Monroe. To abandon it, on the other hand, disregarding both the logic of the situation and the facts of our past experience, would be to renounce a policy which has proved both an easy defence against foreign aggression and a prolific source of internal progress and prosperity. ✓

There is, then, a doctrine of American public law, well founded in principle and abundantly sanctioned by precedent, which entitles and requires the United States to treat as an injury to itself the forcible assumption by an European power of political control over an American state. The application of the doctrine to the boundary dispute between Great Britain and Venezuela remains to be made and presents no real difficulty. ✓ Though the dispute relates to a boundary line, yet, as it is between states, it necessarily imports political control to be lost by one party and gained by the other. The political control at stake, too, is of no mean importance, but concerns a domain of great extent—the British claim, it will be remembered, apparently expanded in two years some 33,000 square miles—and, if it also directly involves the command of the mouth of the Orinoco, is of immense consequence in connection with the whole river navigation of the interior of South America. It has been intimated, indeed, that in respect of these South American possessions Great Britain is herself an American state like any other, so that a controversy between her and Venezuela is to be settled between themselves as if it were between Venezuela and Brazil or between Venezuela and Colombia, and does not call for or justify United States intervention. If this view be tenable at all, the logical sequence is plain.

Great Britain as a South American state is to be entirely differentiated from Great Britain generally, and if the boundary question cannot be settled otherwise than by force, British Guiana, with her own independent resources and not those of the British Empire, should be left to settle the matter with Venezuela—an arrangement which very possibly Venezuela might not object to. But the proposition that an European power with an American dependency is for the purposes of the Monroe doctrine to be classed not as an European but as an American state will not

admit of serious discussion. If it were to be adopted, the Monroe doctrine would be too valueless to be worth asserting. Not only would every European power now having a South American colony be enabled to extend its possessions on this continent indefinitely, but any other European power might also do the same by first taking pains to procure a fraction of South American soil by voluntary cession.

The declaration of the Monroe message — that existing colonies or dependencies of an European power would not be interfered with by the United States — means colonies or dependencies then existing, with their limits as then existing. So it has been invariably construed, and so it must continue to be construed unless it is to be deprived of all vital force. Great Britain cannot be deemed a South American state within the purview of the Monroe doctrine, nor, if she is appropriating Venezuelan territory, is it material that she does so by advancing the frontier of an old colony instead of by the planting of a new colony. The difference is matter of form and not of substance and the doctrine if pertinent in the one case must be in the other also. It is not admitted, however, and therefore cannot be assumed, that Great Britain is in fact usurping dominion over Venezuelan territory. While Venezuela charges such usurpation, Great Britain denies it, and the United States, until the merits are authoritatively ascertained, can take sides with neither. But while this is so — while the United States may not, under existing circumstances at least, take upon itself to say which of the two parties is right and which wrong — it is certainly within its right to demand that the truth shall be ascertained. Being entitled to resent and resist any sequestration of Venezuelan soil by Great Britain, it is necessarily entitled to know whether such sequestration has occurred or is now going on. Otherwise, if the United States is without the right to know and have it determined whether there is or is not British aggression upon Venezuelan territory, its right to protest against or repel such aggression may be dismissed from consideration.

The right to act upon a fact the existence of which there is no right to have ascertained is simply illusory. It being clear, therefore, that the United States may legitimately insist upon the merits of the boundary question being determined, it is equally clear that there is but one feasible mode of determining them, viz., peaceful arbitration. The impracticability of any conventional adjustment has been often and thoroughly demonstrated. Even more impossible of consideration is an appeal to arms — a mode of settling national pretensions unhappily not yet

wholly obsolete. If, however, it were not condemnable as a relic of barbarism and a crime in itself, so one-sided a contest could not be invited nor even accepted by Great Britain without distinct disparagement to her character as a civilized state. Great Britain, however, assumes no such attitude. On the contrary, she both admits that there is a controversy and that arbitration should be resorted to for its adjustment. But, while up to that point her attitude leaves nothing to be desired, its practical effect is completely nullified by her insistence that the submission shall cover but a part of the controversy — that, as a condition of arbitrating her right to a part of the disputed territory, the remainder shall be turned over to her. If it were possible to point to a boundary which both parties had ever agreed or assumed to be such either expressly or tacitly, the demand that territory conceded by such line to British Guiana should be held not to be in dispute might rest upon a reasonable basis. But there is no such line. The territory which Great Britain insists shall be ceded to her as a condition of arbitrating her claim to other territory has never been admitted to belong to her. It has always and consistently been claimed by Venezuela.

Upon what principle — except her feebleness as a nation — is she to be denied the right of having the claim heard and passed upon by an impartial tribunal? No reason nor shadow of reason appears in all the voluminous literature of the subject. “It is to be so because I will it to be so” seems to be the only justification Great Britain offers. It is, indeed, intimated that the British claim to this particular territory rests upon an occupation, which, whether acquiesced in or not, has ripened into a perfect title by long continuance. But what prescription affecting territorial rights can be said to exist as between sovereign states? Or, if there is any, what is the legitimate consequence? It is not that all arbitration should be denied, but only that the submission should embrace an additional topic, namely, the validity of the asserted prescriptive title either in point of law or in point of fact. No different result follows from the contention that as matter of principle Great Britain cannot be asked to submit and ought not to submit to arbitration her political and sovereign rights over territory. This contention, if applied to the whole or to a vital part of the possessions of a sovereign state, need not be controverted. To hold otherwise might be equivalent to holding that a sovereign state was bound to arbitrate its very existence.

But Great Britain has herself shown in various instances that the principle has no pertinency when either the interests or the territorial area involved are not of controlling magnitude and her

loss of them as the result of an arbitration cannot appreciably affect her honor or her power. Thus, she has arbitrated the extent of her colonial possessions twice with the United States, twice with Portugal, and once with Germany, and perhaps in other instances. The Northwest Water Boundary arbitration of 1872 between her and this country is an example in point and well illustrates both the effect to be given to long-continued use and enjoyment and the fact that a truly great power sacrifices neither prestige nor dignity by reconsidering the most emphatic rejection of a proposition when satisfied of the obvious and intrinsic justice of the case. By the award of the Emperor of Germany, the arbitrator in that case, the United States acquired San Juan and a number of smaller islands near the coast of Vancouver as a consequence of the decision that the term "the channel which separates the continent from Vancouver's Island," as used in the treaty of Washington of 1846, meant the Haro channel and not the Rosario channel. Yet a leading contention of Great Britain before the arbitrator was that equity required a judgment in her favor because a decision in favor of the United States would deprive British subjects of rights of navigation of which they had had the habitual enjoyment from the time when the Rosario Strait was first explored and surveyed in 1798. So, though by virtue of the award the United States acquired San Juan and the other islands of the group to which it belongs, the British Foreign Secretary had in 1859 instructed the British Minister at Washington as follows:

"Her Majesty's Government must, therefore, under any circumstances, maintain the right of the British Crown to the Island of San Juan. The interests at stake in connection with the retention of that Island are too important to admit of compromise and Your Lordship will consequently bear in mind that, whatever arrangement as to the boundary line is finally arrived at, no settlement of the question will be accepted by Her Majesty's Government which does not provide for the Island of San Juan being reserved to the British Crown."

Thus, as already intimated, the British demand that her right to a portion of the disputed territory shall be acknowledged before she will consent to an arbitration as to the rest seems to stand upon nothing but her own *ipse dixit*. She says to Venezuela, in substance: "You can get none of the debatable land by force, because you are not strong enough; you can get none by treaty, because I will not agree; and you can take your chance of getting a portion by arbitration, only if you first agree to aban-

don to me such other portion as I may designate." It is not perceived how such an attitude can be defended nor how it is reconcilable with that love of justice and fair play so eminently characteristic of the English race. It in effect deprives Venezuela of her free agency and puts her under virtual duress. Territory acquired by reason of it will be as much wrested from her by the strong hand as if occupied by British troops or covered by British fleets. It seems therefore quite impossible that this position of Great Britain should be assented to by the United States, or that, if such position be adhered to with the result of enlarging the bounds of British Guiana, it should not be regarded as amounting, in substance, to an invasion and conquest of Venezuelan territory.

In these circumstances, the duty of the President appears to him unmistakable and imperative. Great Britain's assertion of title to the disputed territory combined with her refusal to have that title investigated being a substantial appropriation of the territory to her own use, not to protest and give warning that the transaction will be regarded as injurious to the interests of the people of the United States as well as oppressive in itself would be to ignore an established policy with which the honor and welfare of this country are closely identified. While the measures necessary or proper for the vindication of that policy are to be determined by another branch of the Government, it is clearly for the Executive to leave nothing undone which may tend to render such determination unnecessary.

You are instructed, therefore, to present the foregoing views to Lord Salisbury by reading to him this communication (leaving with him a copy should he so desire), and to reinforce them by such pertinent considerations as will doubtless occur to you. They call for a definite decision upon the point whether Great Britain will consent or will decline to submit the Venezuelan boundary question in its entirety to impartial arbitration. It is the earnest hope of the President that the conclusion will be on the side of arbitration, and that Great Britain will add one more to the conspicuous precedents she has already furnished in favor of that wise and just mode of adjusting international disputes. If he is to be disappointed in that hope, however—a result not to be anticipated and in his judgment calculated to greatly embarrass the future relations between this country and Great Britain—it is his wish to be made acquainted with the fact at such early date as will enable him to lay the whole subject before Congress in his next annual message.

I am, sir, your obedient servant,

RICHARD OLNEY.

Lord Salisbury to Sir Julian Pauncefote.

No. 189.]

FOREIGN OFFICE,
November 26, 1895.

SIR, On the 7th August I transmitted to Lord Gough a copy of the despatch from Mr. Olney which Mr. Bayard had left with me that day, and of which he had read portions to me. I informed him at the time that it could not be answered until it had been carefully considered by the Law Officers of the Crown. I have therefore deferred replying to it till after the recess.

I will not now deal with those portions of it which are concerned exclusively with the controversy that has for some time past existed between the Republic of Venezuela and Her Majesty's Government in regard to the boundary which separates their dominions. I take a very different view from Mr. Olney of various matters upon which he touches in that part of the despatch; but I will defer for the present all observation upon it, as it concerns matters which are not in themselves of first-rate importance, and do not directly concern the relations between Great Britain and the United States.

The latter part however of the despatch, turning from the question of the frontiers of Venezuela, proceeds to deal with principles of a far wider character, and to advance doctrines of international law which are of considerable interest to all the nations whose dominions include any portion of the western hemisphere.

The contentions set forth by Mr. Olney in this part of his despatch are represented by him as being an application of the political maxims which are well known in American discussion under the name of the Monroe doctrine. As far as I am aware, this doctrine has never been before advanced on behalf of the United States in any written communication addressed to the Government of another nation; but it has been generally adopted and assumed as true by many eminent writers and politicians in the United States. It is said to have largely influenced the Government of that country in the conduct of its foreign affairs: though Mr. Clayton, who was Secretary of State under President Taylor, expressly stated that that Administration had in no way adopted it. But during the period that has elapsed since the Message of President Monroe was delivered in 1823, the doctrine has undergone a very notable development, and the aspect which it now presents in the hands of Mr. Olney differs widely from its character when it first issued from the pen of its author. The two propositions which in effect President Monroe laid down

were, first, that America was no longer to be looked upon as a field for European colonization; and, secondly, that Europe must not attempt to extend its political system to America, or to control the political condition of any of the American communities who had recently declared their independence.

The dangers against which President Monroe thought it right to guard were not as imaginary as they would seem at the present day. The formation of the Holy Alliance; the Congresses of Laybach and Verona; the invasion of Spain by France for the purpose of forcing upon the Spanish people a form of government which seemed likely to disappear, unless it was sustained by external aid, were incidents fresh in the mind of President Monroe when he penned his celebrated Message. The system of which he speaks, and of which he so resolutely deprecates the application to the American Continent, was the system then adopted by certain powerful States upon the Continent of Europe of combining to prevent by force of arms the adoption in other countries of political institutions which they disliked, and to uphold by external pressure those which they approved. Various portions of South America had recently declared their independence, and that independence had not been recognized by the Governments of Spain and Portugal, to which, with small exception, the whole of Central and South America were nominally subject. It was not an imaginary danger that he foresaw, if he feared that the same spirit which had dictated the French expedition into Spain might inspire the more powerful Governments of Europe with the idea of imposing, by the force of European arms, upon the South American communities the form of government and the political connection which they had thrown off. In declaring that the United States would resist any such enterprise if it was contemplated, President Monroe adopted a policy which received the entire sympathy of the English Government of that date.

The dangers which were apprehended by President Monroe have no relation to the state of things in which we live at the present day. There is no danger of any Holy Alliance imposing its system upon any portion of the American Continent, and there is no danger of any European State treating any part of the American Continent as a fit object for European colonization. It is intelligible that Mr. Olney should invoke, in defence of the views on which he is now insisting, an authority which enjoys so high a popularity with his own fellow-countrymen. But the circumstances with which President Monroe was dealing, and those to which the present American Government is addressing itself,

have very few features in common. Great Britain is imposing no "system" upon Venezuela, and is not concerning herself in any way with the nature of the political institutions under which the Venezuelans may prefer to live. But the British Empire and the Republic of Venezuela are neighbours, and they have differed for some time past, and continue to differ, as to the line by which their dominions are separated. It is a controversy with which the United States have no apparent practical concern. It is difficult, indeed, to see how it can materially affect any State or community outside those primarily interested, except perhaps other parts of Her Majesty's dominions, such as Trinidad. The disputed frontier of Venezuela has nothing to do with any of the questions dealt with by President Monroe. It is not a question of the colonization by a European Power of any portion of America. It is not a question of the imposition upon the communities of South America of any system of government devised in Europe. It is simply the determination of the frontier of a British possession which belonged to the Throne of England long before the Republic of Venezuela came into existence. But even if the interests of Venezuela were so far linked to those of the United States as to give to the latter a *locus standi* in this controversy, their Government apparently have not formed, and certainly do not express, any opinion upon the actual merits of the dispute. The Government of the United States do not say that Great Britain, or that Venezuela, is in the right in the matters that are in issue. But they lay down that the doctrine of President Monroe, when he opposed the imposition of European systems, or the renewal of European colonization, confers upon them the right of demanding that when a European Power has a frontier difference with a South American community, the European Power shall consent to refer that controversy to arbitration; and Mr. Olney states that unless Her Majesty's Government accede to this demand, it will "greatly embarrass the future relations between Great Britain and the United States."

Whatever may be the authority of the doctrine laid down by President Monroe, there is nothing in his language to show that he ever thought of claiming this novel prerogative for the United States. It is admitted that he did not seek to assert a Protectorate over Mexico, or the States of Central and South America. Such a claim would have imposed upon the United States the duty of answering for the conduct of these States, and consequently the responsibility of controlling it. His sagacious foresight would have led him energetically to deprecate the addition of so serious

a burden to those which the Rulers of the United States have to bear. It follows of necessity that if the Government of the United States will not control the conduct of these communities, neither can it undertake to protect them from the consequences attaching to any misconduct of which they may be guilty towards other nations. If they violate in any way the rights of another State, or of its subjects, it is not alleged that the Monroe doctrine will assure them the assistance of the United States in escaping from any reparation which they may be bound by international law to give. Mr. Olney expressly disclaims such an inference from the principles he lays down.

But the claim which he founds upon them is that, if any independent American State advances a demand for territory of which its neighbour claims to be the owner, and that neighbour is the colony of a European State, the United States have a right to insist that the European State shall submit the demand, and its own impugned rights to arbitration.

I will not now enter into a discussion of the merits of this method of terminating international differences. It has proved itself valuable in many cases; but it is not free from defects, which often operate as a serious drawback on its value. It is not always easy to find an Arbitrator who is competent, and who, at the same time, is wholly free from bias; and the task of insuring compliance with the Award when it is made is not exempt from difficulty. It is a mode of settlement of which the value varies much according to the nature of the controversy to which it is applied, and the character of the litigants who appeal to it. Whether, in any particular case, it is a suitable method of procedure is generally a delicate and difficult question. The only parties who are competent to decide that question are the two parties whose rival contentions are in issue. The claim of a third nation, which is unaffected by the controversy, to impose this particular procedure on either of the two others, cannot be reasonably justified, and has no foundation in the law of nations.

In the remarks which I have made, I have argued on the theory that the Monroe doctrine in itself is sound. I must not, however, be understood as expressing any acceptance of it on the part of Her Majesty's Government. It must always be mentioned with respect, on account of the distinguished statesman to whom it is due, and the great nation who have generally adopted it. But international law is founded on the general consent of nations; and no statesman, however eminent, and no nation, however powerful, are competent to insert into the code of international law a novel principle which was never recognized before,

and which has not since been accepted by the Government of any other country. The United States have a right, like any other nation, to interpose in any controversy by which their own interests are affected; and they are the judge whether those interests are touched, and in what measure they should be sustained. But their rights are in no way strengthened or extended by the fact that the controversy affects some territory which is called American. Mr. Olney quotes the case of the recent Chilean war, in which the United States declined to join with France and England in an effort to bring hostilities to a close, on account of the Monroe doctrine. The United States were entirely in their right in declining to join in an attempt at pacification if they thought fit; but Mr. Olney's principle that "American questions are for American decision," even if it receive any countenance from the language of President Monroe (which it does not), cannot be sustained by any reasoning drawn from the law of nations.

The Government of the United States is not entitled to affirm as a universal proposition, with reference to a number of independent States for whose conduct it assumes no responsibility, that its interests are necessarily concerned in whatever may befall those States simply because they are situated in the Western Hemisphere. It may well be that the interests of the United States are affected by something that happens to Chile or to Peru, and that that circumstance may give them the right of interference; but such a contingency may equally happen in the case of China or Japan, and the right of interference is not more extensive or more assured in the one case than in the other.

Though the language of President Monroe is directed to the attainment of objects which most Englishmen would agree to be salutary, it is impossible to admit that they have been inscribed by any adequate authority in the code of international law; and the danger which such admission would involve is sufficiently exhibited both by the strange development which the doctrine has received at Mr. Olney's hands, and the arguments by which it is supported, in the despatch under reply. In defence of it he says:

That distance and 3,000 miles of intervening ocean *make any permanent political union between a European and an American State unnatural and inexpedient* will hardly be denied. But physical and geographical considerations are the least of the objections to such a union. Europe has a set of primary interests which are peculiar to herself; America is not interested in them, and ought not to be vexed or complicated with them.

And again :

Thus far in our history we have been spared the burdens and evils of immense standing armies and all the other accessories of huge warlike establishments ; and the exemption has highly contributed to our national greatness and wealth, as well as to the happiness of every citizen. But *with the Powers of Europe permanently encamped on American soil*, the ideal conditions we have thus far enjoyed cannot be expected to continue.

The necessary meaning of these words is that the union between Great Britain and Canada ; between Great Britain and Jamaica and Trinidad ; between Great Britain and British Honduras or British Guiana are "inexpedient and unnatural." President Monroe disclaims any such inference from his doctrine ; but in this, as in other respects, Mr. Olney develops it. He lays down that the inexpedient and unnatural character of the union between a European and American State is so obvious that it "will hardly be denied." Her Majesty's Government are prepared emphatically to deny it on behalf of both the British and American people who are subject to her Crown. They maintain that the union between Great Britain and her territories in the Western Hemisphere is both natural and expedient. They fully concur with the view which President Monroe apparently entertained, that any disturbance of the existing territorial distribution in that hemisphere by any fresh acquisitions on the part of any European State would be a highly inexpedient change. But they are not prepared to admit that the recognition of that expediency is clothed with the sanction which belongs to a doctrine of international law. They are not prepared to admit that the interests of the United States are necessarily concerned in every frontier dispute which may arise between any two of the States who possess dominion in the Western Hemisphere ; and still less can they accept the doctrine that the United States are entitled to claim that the process of arbitration shall be applied to any demand for the surrender of territory which one of those States may make against another.

I have commented in the above remarks only upon the general aspect of Mr. Olney's doctrines, apart from the special considerations which attach to the controversy between the United Kingdom and Venezuela in its present phase. This controversy has undoubtedly been made more difficult by the inconsiderate action of the Venezuelan Government in breaking off relations with Her Majesty's Government, and its settlement has been correspondingly delayed ; but Her Majesty's Government have not surren-

dered the hope that it will be adjusted by a reasonable arrangement at an early date.

I request that you will read the substance of the above despatch to Mr. Olney, and leave him a copy if he desires it.

S.

President Cleveland in submitting the above correspondence to Congress concluded his message as follows : —

Without attempting extended argument in reply to these positions, it may not be amiss to suggest that the doctrine upon which we stand is strong and sound because its enforcement is important to our peace and safety as a nation, and is essential to the integrity of our free institutions and the tranquil maintenance of our distinctive form of government. It was intended to apply to every stage of our national life, and cannot become obsolete while our Republic endures. . . .

In the belief that the doctrine for which we contend was clear and definite, that it was founded upon substantial considerations and involved our safety and welfare, that it was fully applicable to our present conditions and to the state of the world's progress, and that it was directly related to the pending controversy and without any conviction as to the final merits of the dispute, but anxious to learn in a satisfactory and conclusive manner whether Great Britain sought, under a claim of boundary, to extend her possessions on this continent without right, or whether she merely sought possession of territory fairly included within her lines of ownership, this Government proposed to the Government of Great Britain a resort to arbitration as the proper means of settling the question to the end that a vexatious boundary dispute between the two contestants might be determined and our exact standing and relation in respect to the controversy might be made clear.

It will be seen from the correspondence herewith submitted that this proposition has been declined by the British Government, upon grounds which in the circumstances seem to me to be far from satisfactory. It is deeply disappointing that such an appeal actuated by the most friendly feelings towards both nations directly concerned, addressed to the sense of justice and to the magnanimity of one of the great powers of the world and touching its relations to one comparatively weak and small, should have produced no better results.

The course to be pursued by this Government in view of the present condition does not appear to admit of serious doubt. Having labored faithfully for many years to induce Great Britain

to submit this dispute to impartial arbitration, and having been now finally apprized of her refusal to do so, nothing remains but to accept the situation, to recognize its plain requirements and deal with it accordingly. Great Britain's present proposition has never thus far been regarded as admissible by Venezuela, though any adjustment of the boundary which that country may deem for her advantage and may enter into of her own free will cannot of course be objected to by the United States.

Assuming, however, that the attitude of Venezuela will remain unchanged, the dispute has reached such a stage as to make it now incumbent upon the United States to take measures to determine with sufficient certainty for its justification what is the true divisional line between the Republic of Venezuela and British Guiana. The inquiry to that end should of course be conducted carefully and judicially, and due weight should be given to all available evidence, records, and facts in support of the claims of both parties.

In order that such an examination should be prosecuted in a thorough and satisfactory manner I suggest that the Congress make an adequate appropriation for the expenses of a Commission, to be appointed by the Executive, who shall make the necessary investigation and report upon the matter with the least possible delay. When such report is made and accepted it will in my opinion be the duty of the United States to resist by every means in its power, as a wilful aggression upon its rights and interests, the appropriation by Great Britain of any lands or the exercise of governmental jurisdiction over any territory which after investigation we have determined of right belongs to Venezuela.

In making these recommendations I am fully alive to the responsibility incurred and keenly realize all the consequences that may follow.

I am nevertheless firm in my conviction that while it is a grievous thing to contemplate the two great English-speaking peoples of the world as being otherwise than friendly competitors in the onward march of civilization, and strenuous and worthy rivals in all the arts of peace, there is no calamity which a great nation can invite which equals that which follows a supine submission to wrong and injustice and the consequent loss of national self-respect and honor, beneath which are shielded and defended a people's safety and greatness.

After a short controversy Congress provided for the appointment of an American Commission of Jurists to inves-

tigate the territorial claims of Venezuela and Great Britain in order to enlighten the government upon the question as to whether Great Britain's action in South America should be accepted by the executive as an extension of European dominion on the American continent. The President therefore appointed a commission "to investigate and report upon the true divisional line between the republic of Venezuela and British Guiana." In asking Congress for an appropriation to defray the expenses of such an investigating board, the President said: "When such report is made and accepted, it will, in my opinion, be the duty of the United States to resist by every means in its power, as a wilful aggression upon its right and interest, the appropriation by Great Britain of any lands or the exercise of governmental jurisdiction over any territory which after investigation we have determined of right belongs to Venezuela.

"In making these recommendations, I am fully alive to the responsibility incurred, and keenly realize all the consequences that may follow."

The commission at once entered upon the arduous labor of examining a voluminous mass of documentary evidence furnished by Venezuela and somewhat good-naturedly by England, but before the final conclusion of their task had been reached, the British Government yielded to the repeated solicitations of the United States, and agreed to arbitrate with Venezuela. For that purpose a treaty was drawn up in Washington and afterward signed (February 12, 1897) by the British and Venezuelan representatives. By this convention a tribunal of arbitration was appointed, consisting of two English judges, two American judges, and a president of the tribunal who should be selected by the four members of the court already designated.

In June, 1899, the commission assembled in Paris. It consisted of Professor Martens, the distinguished Russian authority upon international law, the Chief Justice of the United States, Justice Brewer of the United States Supreme Court, Baron Russell, Lord Chief Justice of England, and Sir Richard Collins, Lord Justice of Appeals of Great Brit-

ain. The Venezuelan case was presented by ex-President Harrison, Gen. B. F. Tracy, M. Mallet-Prevost, and the Marquis de Rajas. The British case was conducted by Sir Richard Webster, Sir Robert Reid, and others. A verdict was rendered on October 3, which was of a compromise nature.

The rendering of this award closed an incident of American intervention in support of the principles of the Monroe Doctrine which has been considered fortunate by many, only in so far as its ending was a happy one. British feeling had been greatly aroused against the United States by what appeared to be an unwarranted meddling in an affair belonging only to Great Britain and Venezuela. On the other hand, the belief had been general in the United States that England's unwillingness at first to arbitrate the dispute gave evidence of her aggressive designs in South America. The positive tone of Mr. Olney's letters and of President Cleveland's messages indicated that Anglo-American affairs were nearing a crisis, and that the two great powers were perilously close to an open rupture. When the moment for sober thought arrived, it was generally conceded that a war so appalling in its probable consequences between these two nations of one language and of a common purpose in the advancement of civilization and constitutional liberty would have been totally unjustified by the circumstances in the case. It has since been freely said that the wise resolution of Great Britain to yield was prompted by the wishes of the Queen, who cherished a desire to preserve peace during her reign between the two great nations of kindred race.

XIII

The course of the Cleveland administration in using the Monroe Doctrine as a means for compelling Great Britain to arbitrate her differences with Venezuela called forth much criticism. The opponents of Mr. Olney's radical position argued that the Monroe Doctrine having been established to meet a certain end, it had accomplished its purposes and was

now *functus officio*. It being at best but a domestic policy, its observance could not properly be enforced against foreign nations. It had no place in international law, and consequently it was unreasonable to expect other powers to recognize it. Indeed, it was not even an established principle of American diplomacy, for it had upon many occasions been disregarded when it might with propriety have been appealed to; whenever proclaimed, it had been accepted by the country as merely the expression of a policy which imposed no obligation upon the government to enforce it. Finally, it was insisted that the occupation by Great Britain of some hundreds of miles of comparatively worthless territory in South America, theretofore considered as belonging to Venezuela, in no manner affected the rights or interests of the United States. On the contrary, some critics rather openly hinted that the settlement of the disputed area by British subjects would give to the territory better chances for development under an assured good government, and that England's occupation of the tract would therefore inure to the advantage of American trade. So far as the wilds of the upper Orinoco were capable of civilized occupation, it would be better for the commercial interests of the world if they were under British jurisdiction than under the uncertain rule of a nation whose weak and faltering government has been throughout its history subject to constant revolution. American trade with Great Britain and with British possessions far exceeded the slender volume of American commerce with Venezuela. Indeed, to have imperilled even for a year the five hundred millions of trade with Great Britain for the sake of the annual two or three millions with Venezuela would have been a quixotic proceeding. This suspected expansion of British territory in South America involved no danger to the safety of the United States. England already possessed Canada with a contiguous boundary line of nearly 3000 miles. The islands of Newfoundland, Bermuda, the Bahamas, Jamaica, together with numerous smaller islands of the Lesser Antilles and Trinidad, already formed a chain of English naval posts along the coast of

the United States. Belize and British Guiana supplemented these outposts, and all of these English possessions, barring the last, are nearer to the United States than is the territory in dispute, — indeed, a direct line from the southernmost point of Florida to the mouth of the Orinoco River is about 1600 miles. The addition of this tract of land to existing English possessions in the Western Hemisphere would have been, after all, a matter of little consequence. The country was a tropical jungle, where the maintenance of military forces would be impossible, on account of its extremely unhealthy climate; and such military posts as England would be likely to establish thereabouts would be located in her existing Guiana colony. Under these circumstances, the danger to the United States arising out of British occupation appeared to be wholly imaginary. If British acquisition of this disputed territory lying so far distant could be justly regarded as threatening the safety of the United States, by similar process of reasoning, to what deplorable condition of helplessness is the American Government reduced by the cordon of English possessions, naval stations, and fortified positions which have threatened it for one hundred years!

Whatever may have been the dangers of European colonization in 1823, that danger had ceased to exist. English liberty is as well guaranteed as American liberty. The English colonist is as jealous of his rights and as determined in the support of human freedom as is the American. Wherever he or his descendants go, industry, trade, commerce, civilization, and religion go with them. In reality, the English Government in its actual administration more nearly approximates that of the United States than does the Government of Venezuela.

Finally it was asked, If British occupation of the disputed territory entailed such disastrous consequences upon the United States that the risk of war were better, would not the nation's safety have demanded at the start a positive denial of British rights in the premises, and a refusal to consent to the arbitration of the boundary lines? To insist

upon Great Britain's acceptance of arbitration, to institute an *ex parte* commission to determine British rights and to dictate the course she was to follow in the settlement of this dispute, was as much an affront as peremptorily to order the British Government to withdraw its pretensions from Venezuelan territory. In either case the United States assumed a high degree of authority which Great Britain refused to acknowledge; in either case, war was a possible outcome. In short, therefore, the opponents of the administration policy held simply that the United States was not threatened in any way by British advances in Venezuela, and therefore the circumstances in the case did not justify the country in going to the extremity of a war with England.

Those who defended the stand taken by the administration asserted that while the occupation of a portion of Venezuela by Great Britain did not in itself endanger American interests, it violated a well-established policy of the American people. This cardinal principle of American diplomacy had been so long revered it should be maintained at all hazards. To abandon the Monroe Doctrine at that particular time would be to open the entire South American continent to the rapacious and land-hungered nations of Europe.

After all is said on both sides of the controversy there is but one point which merits serious consideration. That one point determines the applicability of the doctrine in every case, — that is, the safety of the United States.

Self-defence is an essential principle of existence. It is a law of nature that no rules of society can accurately define. Because the Monroe Doctrine was an invocation of this great principle of which Mr. Monroe was in no wise the author, because it came opportunely, because it was so ably expressed, because it met with enthusiastic approval at the time, it has lived and obtained a permanence in American politics as though it were a principle purely American and of American discovery. In reality it is only a special or a new name for a principle of life that is as old as the existence of man. The new name has supplanted the old in the Ameri-

can mind, and whenever a threat, real or fancied, has come in the shape of aggression in the Western Hemisphere, the United States Government has asserted its right to interpose — the right of self-protection, but called instead the Monroe Doctrine. The phrase “Monroe Doctrine” has been preferred, and in the course of three-quarters of a century it has wrought a weird and enchanting influence on the American intellect. The mind becomes imbued with a vague sense of past traditions resulting in a confusion of sentimental ideas which impair the powers of discrimination, and thus the original purpose of the Monroe Doctrine and the defensive principles which it represents are often lost sight of. Indeed, the circumstances under which the Doctrine was originally enunciated, as well as the condition of American political life previous to 1823, were of a nature to give Mr. Monroe’s declaration a peculiar significance. Fear of European aggression in the Americas was the particular danger that gave the “doctrine” birth. The United States was comparatively a weak nation, its system of government was experimental, and it was in conflict with the monarchical principles of Europe; and jealous Europe was feared. The Spanish possessions were in revolt, and offered a tempting field for the exploitation of European arms. The American people were impressed with the danger that lurked in every European advance; the Monroe Doctrine voiced the apprehension in a manner that satisfied every American citizen.

The American nation is no longer weak; its system of government is no experiment. Absolutism in Europe has almost disappeared, and liberal constitutional monarchies and republics have taken its place. There is no holy alliance, there is no scheme to subvert republican forms of government, but the people of the United States have not yet outlived the inherited fears of their grandfathers, and they still cherish the apprehensions they bequeathed. They cling to the words that proclaimed their fears, the words which Mr. Monroe announced. Thus to-day the same cry of alarm of three generations ago is still uttered; the Monroe Doctrine

has become a magic symbol, and an idol for national worship. Thus it comes about in course of time, after that doctrine has undergone numerous modifications, after it has been distorted in various ways to meet the requirements of party politics, that it has lost, to some extent, its original meaning. The "doctrine", is supported on other grounds than those of self-protection; admittedly British occupation of certain tracts of land in Venezuela could not conceivably endanger the peace, safety, and integrity of the United States, yet the Monroe Doctrine seemed to call for action to prevent such occupany.

The position may be maintained with considerable force that when a political principle obtains a superstitious hold upon a nation that compels its blind observance regardless of consequences it is time to cast it aside. To consign the Monroe Doctrine to its appropriate place of political significance in American history is by no means to deprive the American people of self-protection. It is only to rid the mind of a disturbing factor in the determination of foreign questions — to leave the judgment free to measure danger by the exigencies of the present, and not the remembrance of the fears which are of the past.

The acquisition of the Philippine Islands necessarily opens new fields of diplomacy to the United States Government. To some extent at least the older policy of political isolation must give way to that of a more intimate connection with foreign powers; it is therefore all the more important that every habit of thought should be suppressed which prevents clear and reasonable consideration of all diplomatic questions.

There need be no apprehension lest the people of the United States will always be alert and watchful of their own interests. A higher principle than devotion to the Monroe Doctrine will guide—principles of an organic law upon which the Monroe Doctrine is founded, and of which the Monroe Doctrine was but a single expression.

V

THE NORTHEAST COAST FISHERIES



V

THE NORTHEAST COAST FISHERIES

ONE of the most perplexing problems which the Government of the United States has been called upon to meet, in connection with its foreign relations, is the northeastern fishery question. It formerly concerned the rights of American citizens to catch fish within the territorial waters of Canada and Newfoundland, and to use the shores of these provinces either for the purpose of drying and curing their fares or to procure bait. The consideration of these rights necessarily involved a host of incidental legal questions—such as the nature of territorial jurisdiction over the ocean within the three-mile limit of shore, the doctrine of headlands and the rights of vessels under local laws of commerce and navigation. It involved also the interpretation of numerous treaty stipulations, some of them more or less ambiguous; and these interpretations, furthermore, were too often distorted by the exigencies of party politics. Since the beginning of our national existence this question has brought almost constant care and vexation to both American and English statesmen, and thus far it seems to have defied all efforts at permanent and satisfactory adjustment. Brief respites have been found in the awards of arbitration tribunals, while new conventions and treaties have sufficed temporarily to allay irritation; but after all, the old quarrel of the fishermen constantly recurs in some form no less aggravating and threatening than before.

The circumstances which have given this question eminent importance have been of a nature to render its solution peculiarly difficult. The great economic value of the fisheries, both in the matter of providing employment for thousands of men and in the matter of furnishing to the world a

staple article of food, has excited the earnest solicitude of the governments of both Great Britain and the United States. Each has necessarily sought to secure for its respective subjects the greatest possible advantage in the prosecution of so important an industry.

These fishing operations on the part of Americans have required in the past not only the occupancy of Canadian waters, but equally the occupancy and use of Canadian shores; and as a *quid pro quo* for granting these privileges British subjects have naturally demanded as large remunerations as they could reasonably obtain. On the other hand, American fishermen have always desired, and sometimes demanded as a national right, the privilege to follow their game into British territorial waters, and the United States Government has always sought to obtain for them these important privileges on terms least objectionable and onerous to the nation at large. In pursuit of their vocations, American and Canadian fishermen have necessarily been brought side by side into direct personal contact, thus affording occasion for the breeding of jealousies and bitter feelings of resentment for real and fancied wrongs. It is not remarkable that collisions from time to time have resulted, which have always served to complicate the settlement of the public issues involved.

It has been said that fishermen are the "wards of nations." They enjoy certain special immunities in times of war, and in many respects they receive from their governments all the fostering care and protection required at the hands of a guardian. Formerly they were specially encouraged and protected both by England and the United States, on the ground that the character of their calling peculiarly fitted them for the naval service. From this nautical school the hardiest and best sailors have been drafted. In this connection it is interesting to note the fears of an English writer, expressed as early as 1670, who viewed with alarm the growth of the cod-fisheries in the New World. He wrote: "New England is the most prejudicial plantation in this kingdom, . . . of all the American plantations, His Majesty has none so apt

for building or shipping as New England, nor any comparatively so qualified for the breeding of seamen, — principally by reason of their cod and mackerel fisheries, and, in my opinion, there is nothing more prejudicial, and in prospect more dangerous, to any mother kingdom, than the increase of shipping in her colonies, plantations, or provinces.” Sir Joshua Child’s utterance proved prophetic. Thus were the governments of England and of the United States stimulated to nurture with greatest care the industry that furnished their best naval reserves.

The chief difficulty in the way of a permanent and satisfactory settlement of this question has been to discover some suitable return to the Canadians for the privileges asked by American fishermen, *to wit*: the right (should the necessity demand), to fish in Canadian territorial waters, and unmolested to secure bait and supplies ashore. No compensation yet devised for such privileges has remained mutually satisfactory for more than a few years. The partial reduction of tariff duties or the total omission to tax specified articles in favor of Canadian trade has been tried with but indifferent success. The American producers of articles whenever brought thus into active competition with Canadian products, have invariably raised their voices in angry disapproval, — chiefly upon the ground that they were being sacrificed for the benefit of fishermen in whose success or failure they had no interest whatever. Congress has always been compelled sooner or later to abandon this scheme of settlement as impracticable. The admission of Canadian fish free of duty into United States ports has always been regarded by Canada as the proper price for her fishery concessions to the United States, but this seemingly rational method of adjustment has been at all times most vigorously opposed by our own fishermen. They insist that the benefits to the nation of a free fishery are general, and that the burdens of its maintenance should be equally so; moreover, they stoutly maintain that they cannot successfully compete with their Canadian brethren in the United States markets without the same tariff protection accorded to other indus-

tries. Therefore a solution which seems on its face to be perfectly just and rational has always come eventually to be abandoned as impracticable.

The payment of a lump sum or an annual license tax to Canada has at times been considered as a hopeful adjustment of the question, but this means of settlement has always met with a determined opposition from the agricultural classes throughout the country.

Thus it is that, abounding in difficulties, aggravated by frequent encounters of the fishermen, — especially during periods of ill feeling between England and the United States, — complicated by private claims and confused by numerous minor issues, the fishery question has remained an unsolved problem for nearly a century and a quarter.

I

The most valuable food fishes inhabit the cold waters of northern seas. A great ocean river, having its origin in the polar seas, and known as the "Labrador Current," sweeps to the south along the entire shore of British America, past Newfoundland, and down the New England coast. Rounding Cape Cod, and following thence a southern course, it plunges downward, to pass beneath the warmer and lighter waters of the Gulf Stream, and is finally lost in the abyssal depths of the middle Atlantic. The presence of this body of cold water near the coast greatly influences the climate of Labrador and Newfoundland, rendering their shores bleak and desolate, while it prolongs the rigorous winters of New England. As a seeming recompense for so much of cheerless cold and gloom, it brings to these maritime provinces the conditions necessary for a marvellous wealth of marine life, which has proved of almost incalculable value to their inhabitants. The coastal waters of these provinces teem with cod, herring, mackerel, and a variety of other fish of great commercial value.

Of the various kinds of food fish taken in these waters, the first in importance is the cod, which remarkable fish ex-

ceeds in commercial value any other product of the ocean,—possibly excepting the herring, which, in northern Europe, forms the basis of a colossal industry. The natural home of the cod is in the shore waters extending from Greenland to Massachusetts, but they are taken in small numbers as far south as Hatteras. They frequent the coast waters of moderate depths, having no definite migratory habits other than during certain seasons to pass to and from somewhat deeper water offshore, in order to find a temperature more appropriate, or perhaps necessary to their existence. The largest and best cod are those which betake themselves from the shore stations to the more suitable conditions that seem to be offered by those “elevated tablelands” of the Atlantic,—those great submarine plateaux that lie to the south and east of Newfoundland, and to the east of Nova Scotia and New England, and which are known as the “Banks.” Here, at a depth of fifty to four hundred feet, they are found in countless numbers. Notwithstanding the fact that for several hundred years the Banks have furnished to the fishermen millions of cod, the supply seems to be but little less abundant than when first discovered. On shore stations their decreasing numbers may be attributed to the exhaustive raids made upon the smaller species of fish which serve the larger ones as food, rather than to the direct catch of shore cod. On the Maine and Massachusetts coasts cod have long since ceased to exist in quantities sufficient to warrant extensive operations as are now carried on by the fleets of American vessels employed on the Banks. Bartholomew Gosnold, in 1602, arriving at Cape Cod, reported that the fish were so abundant that they “did vex the ship.” With due allowance for Gosnold’s enthusiasm, the prevalence of cod in New England in colonial days is evidenced by the flourishing business carried on along its shores by the early settlers, even so late as the revolutionary era. The decline was felt, however, even before that period, and it continued in increasing ratio on account of the steady development of manufacturing interests in New England. The damming of rivers to secure water power for machinery

to a great extent destroyed the spawning grounds of the fish. Cod, however, still exist all along the New England shores in varying quantities, though the supply is scarcely sufficient some seasons to meet the demands of local markets.

Every portion of the fish is of use. The flesh, as a staple article of food, forms the basis of an enormous export trade to all parts of the world; the entrails, head, and bones, are extensively used for fertilizing lands; the swimming bladder is employed in the manufacture of gelatine, and the oil extracted from the liver is well known as a valuable agent in the materia medica; the skin is utilized in the manufacture of glue.

A number of cities on the Maine and Massachusetts coasts are famous as rendezvous for large fleets of fishing vessels which make their annual cruises to the Banks for the purpose of gathering the harvests of the sea. Many of these cities owe both their origin and their prosperity to the energy, industry and success of their fishermen. The business is probably of less relative importance to-day, although the number of men employed in 1900 was about 35,000, the catch 162,218,921 pounds, and its value \$4,385,102.

The method of fishing on the Banks is from small boats with hand lines and trawls, the latter being long lines upon which are attached several hundred hooks. They are anchored and buoyed at both ends, and left out during the night. In the morning the trawl is brought up, the fish that have feasted unwisely are removed, and the hooks are rebaited to repeat the operation. The bait used is the soft-shell clam, the capelin (a small fish from the bays of Newfoundland), and the squid (a mollusk of the cuttle-fish order, which is principally taken in Newfoundland waters). When the American fishermen use clams as bait they take a supply, iced or salted, from the United States, being enabled thereby to avoid the necessity of touching the Dominion coast; in former times, however, a call at some Canadian or Newfoundland port was made imperative for obtaining supplies of capelin or squid, neither of which occurs abundantly in the United States. A class of Canadian longshoremen followed

the business of catching and providing these articles of bait to American fishermen, the rates being about \$1 a barrel, though it sometimes happened, in the confusion of their misunderstandings, that the Canadians declined to supply their rivals with the necessary bait.

Formerly, when fishing on the coast stations, the cod were taken ashore, cleaned, split open, and spread out to dry in the sun upon "stages," or rudely constructed wooden platforms. Thus prepared, the fish will keep indefinitely. Bank fishermen never resort to this means of curing their fish, the run into port consuming too much valuable time. The fish are carefully salted or iced, and packed away in the holds of the vessels, and thus brought home. The decline of shore fisheries for cod, and the substitution in late years of a better class of Bank fishing vessels carrying ice, has materially changed the relations of American and Canadian cod-fishermen. The former maintain they are independent of all privileges the Canadians might seek to offer them, yet the fact remains that shore privileges in Newfoundland are still considered valuable for purposes of transshipment of cargo, refitting, purchase of bait, ice, and provisions.

The mackerel is a pelagic free-roving fish, appearing at times in vast numbers within the shore waters from the Gulf of St. Lawrence to Cape Hatteras. They appear and disappear suddenly, and without known reason, to the joy or despair of the masters and crews of a large fleet of American mackerel schooners. The capriciousness of this excellent food fish is liable to bring to its pursuers either very great profit, or complete disappointment. Governor Winthrop, in 1639, relates: "There was such a store of exceeding large and fat mackerel upon our coasts this season as was a great benefit to all our plantation, since one boat with three men would take in a week ten hogsheads, which were sold at Connecticut for three pounds ten shillings a hogshead." American fishing schooners have long frequented Canadian territorial waters in the prosecution of the mackerel fishery, and many disputes have arisen between the two governments concerning the value to American citizens of this privilege.

The uncertain nature of the fish renders all calculations respecting future catches virtually impossible; hence, it is the more difficult to agree upon regulations for future seasons to govern the mackerel fisheries.

When the mackerel first appear in the early summer months along the New England coasts, the fleet of American fishermen set out in pursuit, following the school of fish into the Gulf of St. Lawrence, where they remain throughout the summer. As the mackerel frequent shallow water, the American fishermen, having no right to do so, are often tempted to approach the shore and carry on their operations within the forbidden territorial waters of Canada. This has been even recently one of the principal grievances of the Canadian fishermen. The method employed by Americans in the mackerel fishery is the "purse seine." This mode of fishing is attended with many difficulties and dangers in the shallow waters of the Gulf of St. Lawrence, where violent squalls are frequent, yet as a method of capturing fish it is most effective. The Canadians object to the use of the purse seine, even when employed outside the three-mile limit of their jurisdictional waters, for, they maintain, it "vexes" the fish, interferes with their breeding, and tends to drive them away altogether from the Gulf. For this reason they hold — on the score of *contra bonos mores* — that the Americans have no right to use this kind of seine in the Gulf of St. Lawrence. In asserting their right to fish as they choose upon the high seas, the attitude of American and Canadian fishermen is the exact reverse of the positions assumed by their respective governments in relation to pelagic sealing in Bering Sea. The most serious difficulties of the fishery question to-day are connected with the rights and privileges of the American mackerel fleet.

— The herring fisheries of the United States, until within recent years, have occupied a relatively subordinate place. In northern Europe this industry is carried on with great vigor, the annual yield sometimes reaching the extraordinary number of 2,500,000,000 fish. The herring on the west side of the Atlantic have their range within the limits of the

Labrador current. They swarm in countless numbers on the Banks, and indeed throughout the Canadian and Newfoundland shore waters, but they were not formerly pursued by Americans with the energy and zeal justified by their value as an article of food. By treaty with England, American fishermen obtained the right to catch herring about the Magdalen Islands, and in 1839, just after the commencement of the fishery, a record is given of 146 American schooners "taking nearly 700 barrels each." A generous estimate of 1,000,000 barrels of herring taken annually from Dominion and Newfoundland waters has been given by Professor Hinds. A large part of these were taken, however, for fertilizing purposes.

As carried on to-day the herring is largely a shore fishery. The young herring swim in vast schools close along the margin of the water, having certain definite courses which they follow. The fishermen construct "weirs" or pocket-like traps, extending out from the land and crossing the track of the fish. In these labyrinths, the herring become imprisoned in great numbers. They form the basis of a rapidly growing "sardine" canning industry in New England. The herring, being practically a shore fishery, does not figure prominently in the disputes between the two governments.

In a lesser degree, pollock, haddock, hake, halibut and other species of fish, of more or less commercial value, figure in the comprehensive phrase "Northeast Coast Fisheries"; but the greater importance of the cod and mackerel over other varieties of fish included within the term, warrants the omission of all others from a historical review of the subject.

II

As early as 1415 English fishermen resorted to Iceland to catch cod. There is evidence tending to prove that before the voyages of Columbus, the codfishery of the Newfoundland Banks was known to the Basque and Normandy fisher-

men. This supposition is supported by the fact that, as early as 1504, only seven years after the discovery of Newfoundland by the Cabots, Basque fishermen are known to have visited the Banks, and in 1557 their fishing operations in the New World had increased in extent to the employment of some fifty or more vessels.

The English do not seem promptly to have followed up the advantages gained for them by the discoveries of Cabot in 1497. Possibly the superior naval forces of her enemies deterred her at that time from asserting jurisdiction over the waters of North America. These waters had been reported, first by Cabot, and soon after by other English voyagers, as marvellously rich in fish. For nearly a century England made no attempt to colonize the newly discovered territories. The French were more alert in grasping the importance of the new industry thus disclosed to the world, and during the early and middle portions of the sixteenth century, enterprising merchants of Dieppe, St. Malo and Rouen, sent their vessels to the Banks in annually increasing numbers. By the year 1540, they had established fishing stations on the shores of Newfoundland, and in 1577 their fleet mustered 150 ships. At that time Spain and Portugal were also well represented on the Banks, but the thirst for gold, which consumed the Spanish adventurers of that period, soon lured away her fishermen to the West Indies; and the Portuguese soon found more congenial fields for exploration in Brazil. By the end of the century Spanish and Portuguese ships disappeared almost entirely from the fishing grounds.

English vessels, fitted out in London and Bristol, came to Newfoundland as early as 1540, and continued yearly to visit the region, though their operations were not carried on with the vigor that characterized the efforts of the French fishermen of that period. Verranzo, Chabot, Cartier, Robeval de la Roche and other voyagers of the sixteenth century were conspicuous in establishing the supremacy of France in this part of the New World; and Champlain, who founded Quebec in 1608, gave his country a still firmer hold on these shores,

—a hold that took the English a century and a half to loosen. The principal, if not the sole object of acquiring territory in northeastern America at this early period, was to obtain a control of the fisheries which were regarded by both English and French as far the most valuable possession of the New World. It was not until 1583, however, that England fully awakened to the necessity of protecting her interests in America. In that year Sir Humphrey Gilbert, with a royal patent from Queen Elizabeth, landed at St. Johns, Newfoundland, for the purpose of establishing a colony. To a motley group of fishermen of various nationalities, who happened to be gathered in the harbor, he read a proclamation, setting forth the intention of his sovereign to assume control of the waters about Newfoundland to the distance of 200 leagues. This order was enforced, notably in one instance, when that redoubtable old sea rover, Sir Francis Drake, cruising thereabouts some years later, seized several Portuguese fishing vessels as prizes; and although his captures were made many miles from land, he appropriated to his own use their cargoes of fish and oil. This tardy effort at colonization, followed by an attack on the right of free fishery, was not an unqualified success, though there is little doubt that it gave a great impetus to English fishing interests in North America. Sir Humphrey's settlement languished, and in 1610 another attempt to colonize the forbidding shores of Newfoundland was made by John Guy of Bristol. Sir Francis Bacon was a patron of this scheme, and his prophetic utterance that the fisheries of Newfoundland would prove more valuable than all the mines of Peru, has been amply verified by time.

John Guy's colony reaped a harvest of sorrows, but it gave another lease of life to English fishery interests. Five years later (1615) 250 English vessels, employing over 10,000 men, were engaged in fishing along the coast, and profits arising therefrom grew apace. In 1623 another colonizing scheme in Newfoundland was carried out by Sir George Calvert, afterward Lord Baltimore, the founder of the colony of Maryland. He was granted by King James a large tract of land

extending from Trinity Bay to Placentia, which he named "Avelon." Baltimore's hardy followers were beset and harassed by the French who, from their strongholds on the mainland, were determined to possess Newfoundland, hoping thereby to secure to themselves the control of the fisheries.

By the middle of the seventeenth century, the resident population of Newfoundland had increased to 2000, the greater part of which followed fishing for a livelihood. Besides them, several thousand fishermen from France and England came annually in the spring season to her shores, returning in the autumn to their homes across the Atlantic with full fares of fish and oil.

This already extensive and rapidly growing industry of the English soon fell into the hands of a number of merchants and shippers who resided in London and in the west coast cities of England. These men having ample means, fitted out numbers of superior vessels, and manning them with skilful crews, began a systematic exploitation of the Newfoundland fisheries. It naturally came to pass that the interests of these English fishermen and of those who had settled permanently as colonists in Newfoundland came into conflict. The former sought the most desirable harbors and shore stations for erecting their stages to cure and prepare their fish, and the resident colonists naturally selected these advantageous coast situations as places for permanent settlement; and thus a petty warfare between settlers and sailors took place every summer on the southern Newfoundland coast. The interests of the English merchants were paramount in the estimation of the sovereign, it being conceived that the only real value of the desolate island of Newfoundland to the mother country consisted in its control of the fisheries, for which control a mere nominal possession of the island was quite sufficient.

Legislation at London accorded precedence and preëminence to the rights of fishermen over those of the Newfoundland settlers. Laws enacted by the English Parliament between 1630 and 1640 proved to be oppressive and highly injurious to the colonists, and the enforcing of many cruel

and unjust regulations, under the plea that the fisheries must be preserved to England, both as a means of profit and as a nursery for her seamen, covered a period of more than a hundred years. The building of houses and cultivation of the soil were prohibited within six miles of the shore, and numerous other barriers to prospective colonization gave great annoyance to existing settlers. In fact, the London Board of Trade, in whose hands the regulation of the English fisheries had been placed, pursued its radical policy so far as to send Sir John Berry to Newfoundland in 1670 with orders to burn and destroy all dwellings, and drive the wretched owners from the island. Under such adverse conditions, British colonization in Newfoundland dwindled into insignificance in the presence of a protected interest of predominant importance. At that dark period of her history, Newfoundland was generally regarded beyond the Atlantic as "a great English ship moored near the Banks during the fishing season for the convenience of English fishermen."

The era of oppression upon the Newfoundland settlers reached its culmination in the passing of the statute, 10 and 11 William and Mary (1698), entitled: "An act to encourage the trade of Newfoundland," which was, in reality, an act to discourage immigration and to foster the interests of fishermen alone. By one of the provisions of this statute, referred to as "infamous" in the annals of Newfoundland, a judicial system was established for the colony, to be administered by the "fishing admiral." This system abolished the plan of dispensing justice, already in vogue in the colony, and created in its stead a form of impromptu courts, held by the captains of the English fishing vessels whenever they happened in port. The captain arriving first in a harbor was constituted "Admiral of the Port," the second, "Vice-Admiral," etc., in whom was vested the exercise of all judicial functions. The rule of these generally ignorant, and too often vicious, men soon brought all semblance of law and order into contempt, and resulted in conditions bordering on anarchy. This statute remained in force many years, and did much to retard the growth of the colony. Indeed, it may reasonably

be questioned whether Newfoundland has ever fully recovered from the many sacrifices she has been forced to make in preserving the monopoly of the fisheries to her mother country. The wealth of her large bays and coastal waters may be said to have brought to the island benefits and damages in about equal proportions.

The history of the fisheries, from the early part of the seventeenth century to the treaty of 1763, is merely the story of English and French conflicts for mastery in the regions lying about the Gulf of St. Lawrence, and south on the mainland of Massachusetts, — the primary object of these many encounters being to secure control of the inexhaustible riches of the neighboring seas.

Throughout the sixteenth century, the flags of France were the more numerous on the fishing grounds; and after the disappearance of the Spanish, the French remained for many years a formidable rival of the English. They clung tenaciously to the shore stations they had established in Newfoundland during the sixteenth century, and were always ready to fight for the maintenance of their full rights on the Banks. In 1577 they employed no less than 150 vessels, and about this time the fisheries were deemed of sufficient importance to be placed under the protection of the French Government.

Seeking a permanent base of operations on the continent, the French set up a claim to Nova Scotia, which, together with Cape Breton, New Brunswick and a part of Maine, constituted a great tract of country known later as Acadia. Basing their rights upon early discovery and upon a grant of Henry IV of France to Pierre de Gast, Sieur de Morts, in 1603, the French occupied this territory, built Port Royal, and established a thriving fishery at Canso. It was the intention of the French monarch to found a colony at some point accessible to the Banks, from which, as a base, the business might be easily and successfully conducted. Cod was becoming a necessity as a food in France, and was especially suitable for use on the many religious fast days of that period. The settlement of Acadia fulfilled all the needs of

this desire to secure the bank fisheries for his own subjects. The first French emigrants to this country, however, came into immediate collision with English subjects, who, taking shelter behind a royal patent from the English sovereign to Sir William Alexander, in 1621, set up a claim of their own to the greater part of the territory constituting Acadia. Here, then, began in earnest the quarrel that, lasting more than a century, terminated only in the total extinction of French sovereignty in Canada. Charles I of England, having married a French princess, was prevailed upon to abandon all settlements in Canada, Nova Scotia and Cape Breton occupied by his subjects; and by the treaty of St. Germain (1632) the French were made secure in their possession of Acadia.

With so favorable a base for aggressive operations, the French began at once to extend their fisheries and to enlarge their dominion. They boasted that they would eventually drive English colonists into the sea. Within three years they obtained privileges from the English Government for drying their fish on the southern shore of Newfoundland by payment of a duty of 5 per cent on the product. In twenty-five years more, by seizing the chance of an opportune moment, they established a colony at Placentia, on the large bay of that name (south shore of Newfoundland). In a short time, and apparently through the favor and sympathy of the English sovereign, they were relieved from the 5 per cent duty which had been previously exacted of them in return for shore privileges. Growing bolder by success, they carried their sphere of influence along the entire southern coast of Newfoundland, establishing here and there fishing stations and small settlements — meeting only occasional checks in their progress from the English settlers on the island.

Cromwell seized Acadia in 1654, during a period of perfect peace between the two nations, on the alleged ground that its transfer to the French by Charles I in 1632 was fraudulent and traitorous; but upon the restoration of the Stuarts this valuable territory was again restored to France (treaty of Breda, 1667), to the intense disgust of all Eng-

lish fishermen, and other English subjects who had borne the brunt of conflict with the ambitious and aggressive Frenchmen of North America.

The New England colonists south of Acadia, who, by this time, were becoming sensible of their increasing vigor and strength, and who, moreover, were acquiring a degree of self-confidence inspired by their triumphs over the many difficulties attending their early settlements, looked upon the growth of French power in the New World with bitter jealousy, intensified as well by local conflict of interest. Not only as British subjects with the usual antipathy against Frenchmen, but in defence of their own colonial interests and welfare, they opposed, whenever opportunity offered, the development of French power and influence in Acadia or elsewhere in North America.

After the breaking out of hostilities between France and England, on the accession of William and Mary to the throne, Sir William Phips of Massachusetts, with a band of hardy fishermen, made a successful attack on Port Royal (1690), and took formal possession of all Acadia in the name of King William. Phips' victory resulted in the alleged annexation of that great province to Massachusetts. Similar attempts were made upon Newfoundland, and among them a desperate effort to dislodge the French from Placentia; but in retaliation St. Johns was successfully besieged by a French fleet. The peace of Ryswick (1697) closed hostilities, leaving the French in the New World in full possession of their previous claims, and Acadia was specifically restored to them. Their right to Placentia and to a considerable extent of the Newfoundland shores was confirmed. The indignation of the English colonists in America, aroused by this surrender of Acadia, was very great. It readily occurred to these people that the mother country attached but little value to her American possessions, or else had consented to sacrifice her interests here as mere pawns on the chessboard of European politics.

The new governor of Acadia, Villabon, announced, soon after the treaty of 1697, that he had received orders from his

home government to arrest any foreign vessels found trespassing on the French shores, the southern limit of which he placed at the Kennebec River. The way was now opened to the goal of French ambition in America, and Villabon set about to secure full and immediate control of the fisheries. French fishing vessels, some five hundred in number, and many of them well armed, soon practically enjoyed a monopoly of the fisheries along the coasts and in the Gulf of St. Lawrence, the returns proving exceedingly remunerative. In order better to maintain this monopoly, he inaugurated a military campaign in Newfoundland, the full possession of which was ever dear to the French. Success attended their arms, and in a very short time nearly every desirable settlement, port and harbor in the island fell into their hands, and Newfoundland became virtually lost to England. French enterprise had secured to them an almost absolute monopoly of the fisheries, and they held besides the territory from Maine to Labrador, including Newfoundland.

The hostilities incident to this great advance of French interests were terminated by the treaty of Utrecht in 1713, which very considerably altered the political situation in the North, and may be said to have inserted a wedge that ultimately rended and destroyed French prestige and monopoly of the fisheries in North American waters. By this famous compact the stronghold of Placentia was yielded by France, and all Newfoundland restored to England. A reservation was made, however, securing to the French a concurrent and equal right of fishery with English subjects along the coast of Newfoundland, from Bona Vista to Cape Riche by the north, and of using the shores for curing, etc. Acadia again became English territory, France retaining only the island of Cape Breton. An instance is given in this treaty of a nation establishing by agreement its exclusive sovereignty over a wide expanse of high seas, for by one of its articles the French were prohibited from approaching within thirty leagues of the coast of Nova Scotia.

The French were by no means discouraged by such reverses, and continued to press their fishing operations with

their accustomed vigor. On the Newfoundland coast, within the area allotted to them, where they enjoyed concurrent fishing rights, they at once began to assert an absolute and exclusive right, and forbade the settlement of the region by English subjects. In Cape Breton, where their fishing fleet of some 400 sail rendezvoused, they constructed the famous fortress of Louisburg. This position was maintained with a sort of desperate determination as the last barrier against English advance. It was designed and considered by the French Government to be absolutely impregnable. It required twenty-five years to build, at a cost of \$5,000,000. Upon its great walls were placed 200 pieces of heavy artillery, which gave defiance to all assault. Within these massive fortifications reposed a city with full complement of public edifices, churches, parks and the homes of several thousand fishermen, by whose persevering industry the city was made prosperous. In the building of this fortress, — “the Dunkirk of America,” — upon a low sandy spot in a desolate island, a mere outpost in the vast wilderness of a new country, one finds a glaring example of the ill-judged policy that has so generally characterized French colonial operations. The splendid scale upon which this great fortress was built measures the earnest and extraordinary interest felt by the French at that period in the northeastern fisheries.

Louisburg was regarded by British subjects in America, and especially in Massachusetts, as both an insult and a menace. The aggressiveness of the French in prosecuting the fisheries; their unreasonable and exaggerated claims on the Newfoundland coast, combined with the uneasiness and jealousy produced by the contemplation of their position of vantage and strength in Cape Breton, greatly irritated and inflamed the colonists. They believed that French chicanery and effrontery had accomplished what her arms had failed to achieve, and it was thoroughly believed and constantly asserted that there could be no lasting peace in America until Gallic influence had been extirpated from the continent.

In 1744 war again broke out between England and France, and the long-cherished plan of striking a blow at

Louisburg was immediately set on foot in New England. Massachusetts colony organized an expedition with Pepperrell, a merchant of Kittery, Maine, at its head. With some English ships as allies he maintained a siege under many difficulties for nearly two months, and was finally rewarded by the capitulation of the fortified city on June 16, 1745. The capture of Louisburg was an event of great importance. Smollett refers to it as "the most important achievement of the war of 1744," as it accomplished much toward balancing English reverses across the Atlantic. Pepperrell was made a baronet, and all the expenses of the campaign which had been borne by Massachusetts were subsequently repaid to the colony. The English colonists were jubilant over the success of their expedition, but they were as suddenly disappointed and chagrined when the English surrendered Cape Breton with a restoration of Louisburg only three years later in the peace of Aix la Chapelle. Again had the mother country profited by the valor of her American subjects in furthering her ends in Europe, and again had the French reaped triumph from defeat in North America.

Louisburg was promptly rebuilt and strengthened, and a vigorous effort was made by France to revive her fishing industries, which had suffered severely by the war. It is estimated that of the 560 French fishing vessels employed at the beginning of the war of 1744, only about 100 remained after the fall of Louisburg; these carried on their operations almost entirely on the Newfoundland coast. Although the French were reaching the period of decline in the prosperity of their North American fishing interests, yet despite all discouragements they had no intention of abandoning the valuable industry. Reinstated in Cape Breton, the French at once resumed their old system of aggression. The ancient quarrels, involving questions of boundary and of fishing rights, were revived. Seemingly incapable of peaceful relations with others, when their interests were touched, they began to renew their attacks on Newfoundland, and to make hostile raids into Nova Scotia. War again broke out between England and France in 1756, one of the causes of which was

these French aggressions upon Nova Scotia and Newfoundland; and it gave the British subjects in America the opportunity they especially desired — to remove, if possible, the humiliation brought on them by the disgraceful peace treaty of Aix la Chapelle. A strong British fleet commanded by Lord Amherst, with the gallant Wolfe second in command, and supported by nearly one-third of the fighting strength of Massachusetts, again captured Louisburg in 1758, and razed its battlements to the ground; the following year Wolfe marched into Canada and captured Quebec. With the fall of these two strongholds, French power in the New World was broken, and Great Britain became mistress of her possessions in North America.

It was during this same war that the attempt was made by the British authorities in Nova Scotia to remove from that colony all vestiges of Latin influence, by forcibly expelling the French settlers from the land. The execution of this harsh and cruel policy furnishes the saddest chapter in the somewhat romantic history of Acadia. Thousands were deported to the Virginia and New England colonies, where they found a scant welcome, and many hundreds perished miserably through exposure and want. The pathetic incidents connected with the depopulation of the French village of Grand Pré, conducted by the unwilling Lieutenant Winslow, who declared the duty "very disagreeable to my natural make and temper," gave to Longfellow the theme for "Evangeline." If the chroniclers of the time are reliable, the natives of Grand Pré were not altogether the simple-hearted, peace-loving people depicted by the poet, but were rather a troublesome and somewhat vicious colony of fishermen who lost no opportunity to inflict injury upon the New England skippers who came in contact with them. Candor, however, compels one in forming estimates of the moral qualities of the French and English fishermen of the seventeenth and eighteenth centuries, to divide honors about equally between them. If the French in Nova Scotia were sullen and unruly under English dominion, and if they enjoyed harrying New Englanders when they came to the Bay of

Fundy, they probably found ample justification for their misdeeds in the bad treatment they had themselves received.

In drawing up the treaty of peace which was concluded in Paris in 1763, much difficulty was encountered by the plenipotentiaries in adjusting the fishery question which appears to have claimed consideration beyond all other topics. France, driven to extremities, seemed willing enough to lose all of Canada, but she insisted upon the retention of some parcel of territory as a basis from which to carry on her fisheries. Strong opposition to any fishing concessions manifested itself in England, it being earnestly contended that the fisheries alone were worth more than possession of all Canada. It was finally agreed that France should continue her use of the shores of Newfoundland from Bona Vista to Cape Riche, as had been previously stipulated in the treaty of Utrecht. French fishermen were not allowed to fish elsewhere within three leagues of the shore; and along the coast of Cape Breton an interdiction of fifteen leagues was placed against them. The islands of St. Pierre and Miquelon were ceded to France in full right, to serve as shelter to its fishermen, and the French engaged not to fortify or to effect permanent settlements upon the same.

The French fishery interests had again suffered severely by these wars, although after the treaty of Paris, through generous bounties and every kind of governmental encouragement, they slowly revived, and in course of time recovered a share of their former prestige. France having sided with the American colonists in their war of independence, suffered the loss of St. Pierre and Miquelon, but by the treaty of Versailles in 1783, these islands were restored, together with an extension of privileges theretofore granted on the shores of Newfoundland, giving them an area of shore line for curing, from Cape St. John to Cape Ray. The phraseology of this treaty, defining the nature of the rights of France on the Newfoundland shore, furnished another subject of contention to English and French statesmen, until a true meaning was agreed upon in 1881, nearly a century

later. The French insisted upon their exclusive right to occupy the shore areas allotted to them, even as against British settlers.

Despite continued ill-feeling between French and English fishing interests, both have nevertheless prospered, and the friction between them has gradually diminished ever since.

III

In seeking a home for themselves and their posterity, the Pilgrim Fathers were largely influenced in their choice of a place of settlement by the value they attached to the fisheries of New England. Enthusiastic descriptions of the abundance of cod in that region had reached them in England. The reports of Gosnold in 1602; of Pring, who explored the harbors of Maine in 1603; of Waymouth in 1605; of Popham and Gilbert who settled in Maine in 1608; and of the romantic John Smith who caught 47,000 cod at Monhegan in 1614, and who devoted pages "writ with his oune hande" to the wealth of the fisheries in the New World, and especially in New England,—all of these had been read and considered by the Puritans before making their exodus to the West. Before abandoning forever the shores of the Old World, they executed contracts with certain merchants in England, to whom they agreed to furnish fish, hoping thereby to defray the expenses of their voyage. In his history of Virginia, John Smith takes credit to himself for having been largely instrumental in inducing the Pilgrims to come to the New World on account of his favorable representations regarding the New England fisheries. In a discourse on the trials of the New England colonists and their wonderful industry in fishing, he enumerates the English ships that had made "exceeding good voyages" to the coasts, and continuing, says, "at last, upon these inducements, some well-disposed Brunists [Puritans], as they are termed, with some gentlemen and merchants of Leyden and Amsterdam, to save charges, would try their oune conclusions, though with great losse and much miserie." He

refers later to the prosperity of the little band in 1634 — “since they had made a salt worke wherewith they preserv all the fish they take, and have fraughted this yeare a ship of an hundred and four score tun.”

The Pilgrims lost no time in entering upon the business of fishing. Within ten years after their landing at Plymouth Rock, they carried on an export fish trade with English and Dutch settlers in New York ; indeed, fishing became the principal occupation and chief source of revenue of the people of New Plymouth, and the rapid settlement of Massachusetts after the founding of that colony was greatly promoted by the great profits arising from the fishing interests on its coast. The colonists at Plymouth found remunerative occupation, while English vessels at Monhegan and other points along the coast of Maine reported fish in great abundance.

It was during the infancy of the Massachusetts colony that Salem, Gloucester and Marblehead were founded, and they soon became centres of great importance for fishing and other associated interests. The first Massachusetts ship visited the Banks of Newfoundland in 1645 — a pioneer destined to have an abundant following. Some friction between the fishermen of Plymouth and Boston manifested itself, but all such differences were finally adjusted by uniting the two colonies in 1692, and the fisheries of the greater Massachusetts flourished more extensively than ever. At the close of the seventeenth century, the merchants of Boston exported to Portugal, Spain and Italy about 100,000 quintals of cod, worth \$400,000 annually.

In 1731 the fisheries of this colony employed about 6000 men. Ten years later the cod fishery had become exceedingly prosperous ; the annual product being about 230,000 quintals, valued at \$700,000. One hundred and sixty fifty-ton vessels were owned at Marblehead alone ; and it is estimated that in all Massachusetts counted about 400 fishing vessels, together with multitudes of smaller fishing craft operating along New England shore stations.

A variety of causes contributed to the decline of the New

England fisheries from 1740 to 1763. As already noted, the struggles between the French and English in Nova Scotia, Cape Breton and Newfoundland were especially acute at that period, and the New Englanders, as British subjects, were expected to answer repeated calls to arms. Fishermen were impressed into the royal navy, or were drafted into military expeditions by land against the traditional foe; and, as is usual in war, industrial pursuits languished.

After the final capitulation of Louisburg and the fall of Quebec, the fishing interests of the British colonies revived, and the coast towns of New England would have greatly increased in population and wealth, but for the threatening controversies which soon led to the American Revolution, and the final separation of the thirteen colonies from the mother country. The commencement of actual hostilities of course suspended all fishing operations until the restoration of peace in 1783.

The important rôle played by the fisheries in the causes that led to the Revolutionary War does not appear to be fully appreciated. Other causes assumed greater and more general prominence in popular discussion because they affected interests more extended in their nature, and exerted an influence on a greater number of the colonists. England had watched with jealous eyes the steadily growing trade — the expanding commerce and the rapidly increasing marine power of the New England colonies. This colonial trade had already extended to the ports of Europe and South America, and to the Spanish, French and English West Indies as well, where American fish found ready market to be paid for in sugar, molasses, rum, bullion and bills of exchange payable in European cities. The commercial prestige of New England began to interfere in no slight degree with the foreign trade of English merchants, and the excellent nautical training acquired by New England fishermen and sailors began to arouse the apprehension of Englishmen who demanded exclusive dominion in all that pertains to British industries.

The policy of curtailing American commerce by legislative

enactment began with the restoration of the Stuarts, and was maintained by a series of more or less stringent navigation laws which imposed the most injurious and oppressive burdens upon the colonists. In 1733 Parliament placed a duty in New England on rum, sugar and molasses imported from the islands of the West Indies other than British, the aim being to check the prosperous trade that had sprung up between Boston and the French, Dutch and Spanish islands. This measure, along with other measures restricting export trade from New England, tended to work great injury to the fishing interests. The merchants of Boston complained bitterly, saying that the fisheries were their mainstay of life, and that to prevent trade with the West Indies was to do no less than render their fisheries of little value — in short, to convert their gold into dross. An English fleet was sent over to enforce the tariff law, but its commander reported, “ye fishermen to be stubberne fellowes,” and in spite of his vigilance, the West Indian trade continued as before, in defiance of Parliamentary action. The act of 1733 was renewed in 1764, and the vigilance of the authorities doubled. The jurisdiction of the admiralty courts was enlarged, and determined efforts were made by the officers of the crown to collect the duties. For this purpose commanders of the English men-of-war were commissioned to act as revenue collectors.

The field having just been cleared of the annoying competition of French fishermen, the Americans were about to enter upon an era of great prosperity. Their fishing stations were located at Canso, in the Bay of Chaleur, and extended along the Labrador coast, and a certain renewal of former successes was just in sight. The navigation laws of England, however, operated so adversely to American interests that the English fishermen, untrammelled by these exactions, soon regained a monopoly in the fishing business. Many New England skippers became discouraged and took their vessels and outfits abroad, where they sold them to their more fortunate rivals. By evasions of the law, however, many of the merchants and fishermen of Boston, Salem and Gloucester

still managed to maintain themselves, but only at the cost of frequent collisions with the king's officers.

The effect upon the fisheries, caused by the renewal of the navigation laws of 1764, is well set forth in the petition of the common council of Massachusetts to the House of Commons for their abrogation. It recites that the importation of molasses from the West India Islands is of the greatest importance, not merely because it is a valuable and useful commodity, but, — "If the trade, for many years carried on for foreign molasses can no longer be continued, a vent cannot be found for more than one-half the fish of inferior quality which are caught and cured by the inhabitants of the province, the French not permitting fish to be carried by foreigners to any of their islands unless to be bartered or exchanged for molasses; that if there be no sale of fish of inferior quality, it will be impossible to continue the fishery; the fish usually sent to England will then cost so dear that the French will be able to undersell the English in all the European markets." Thus it will be seen that the fisheries, which formed the basis of New England commerce, and which may be said to have been the very life-blood of all its commercial enterprise, had a most intimate relation to the causes that soon brought about the dismemberment of the empire.

The final act of Great Britain in its policy toward New England, and which at last brought on the war, was aimed directly against the fisheries, its purpose being to starve the rebellious colonists into submission by destroying their most important industry. Pending the discussion of the bill in the English Parliament "to restrain the trade and commerce of the provinces of Massachusetts Bay and New Hampshire, the colonists of Connecticut and Rhode Island and Providence plantation, in North America, to Great Britain, Ireland, and the British Islands in the West Indies; and to prohibit such provinces and colonies from carrying on any fisheries on the banks of Newfoundland or other places therein to be mentioned, under certain conditions, and for a time to be limited," an examination of witnesses from Massachusetts by a committee of Parliament elicited the statements that the enforce-

ment of such an act would deprive over sixty-two hundred inhabitants of Massachusetts of the means of livelihood, and throw out of employment ten thousand persons. An expert witness from Nantucket declared that the great number of people then engaged in the fisheries in New England, if deprived of the right of following their calling, could only subsist "perhaps three months."

After a stormy debate in both Houses of Parliament, the bill was passed March 21, 1775. The passage of this act, so well calculated to destroy the fisheries of the New England colonies, was soon followed by a motion of Lord North, then the British Premier, that the "House do resolve itself into a committee of the whole to consider the encouragement proper to be given to the fisheries of Great Britain and Ireland."

During the entire period of the war, the fisheries of New England as a business ceased, and the fishermen took an active part in the conflict. In the negotiations of the colonies with France, seeking her aid against England, a proposition was advanced to attempt jointly the capture of Canada and Newfoundland, and if successful, to divide between France and the United States all fishing privileges accruing therefrom. The plan was never seriously entertained by France, and was lost sight of in the United States, amid the stirring events of the Revolution.

Although systematic prosecution of work was necessarily abandoned during the war, the importance and value of the fisheries were steadily kept in view, and after the termination of the conflict the necessity of preserving these interests is evidenced by numerous resolutions of Congress, and is further indicated in the debates of various state legislatures (especially in New England), and in frequent utterances of the public men of the times. It seems to have been believed by many American statesmen of that day that because New England fishermen had contributed their share of blood and treasure in the joint struggles against France for the purpose of securing fishery rights in the Canadian waters, it followed as a natural and legal consequence that Americans must have a perfect right to their continued enjoyment quite irrespective

of any territorial changes, — in which respect it made no difference whether Canada and Newfoundland should remain under the sovereignty of England or pass to the United States at the conclusion of hostilities. In the light of a better understanding of the public law on this subject, it now seems clear that the fishery rights must attach to and adhere to the ownership of and sovereignty over the territories in whose waters the fish are found. Americans should have been left free to fish on the Banks, for they lie wholly without the limits of territorial marine jurisdiction, and are therefore free to the world, — but the right to catch fish in Canadian waters, that is, within the three-mile limit of ordinary marine jurisdiction, was wholly a different matter. In the one case (the Bank fishery) no fears should have been entertained at any time touching the question of American rights. The public law settles this matter, and gives all nations the right to fish outside territorial waters. In the other case, a continuance of inshore fishing by Americans in Canadian territorial waters, as enjoyed by them while British colonists, could not have been allowable as an international right, nor could such right have been legally based on the relations of the parties existing prior to the peace of 1783. The apprehensions of the statesmen of the period lest Great Britain should attempt in a spirit of retaliation to perpetuate the interdictions of Lord North's Bill and thus seek, perhaps by force of arms, to cut off Americans from all participation in the northern fisheries, were possibly well founded. It was determined, at all events, to make the question of the fisheries a prominent subject of the treaty of peace with England. The fishery interests of the country were supposed to be so intimately associated with its commercial prosperity that no conditions interfering with their full development could be tolerated; indeed, it was urged in many quarters that their importance warranted a continuance of the war, if need be, to preserve them inviolate.

The firm purpose of Congress to insist upon a full recognition of these fishing rights as a *sine qua non* of commercial relations with England was supported by all its members;

barring certain delegates from the extreme South. These legislators represented constituents who had never participated in the fisheries, and who therefore felt their importance less keenly. Mr. Gerry, of Massachusetts, replied to their protests against making free fishery an important feature of the coming peace negotiations: "It is not so much fishing as enterprise, industry, employment. It is not fish merely, which gentlemen sneer at, — it is gold, the product of that avocation. It is the employment of those who would otherwise be idle, the food of those who would otherwise be hungry, the wealth of those who would otherwise be poor, that depend on your putting these resolutions into the instructions of your minister."

After a lengthy debate (1779) Congress instructed John Adams, who was then in Europe acting in a diplomatic capacity, and to whom had been entrusted the responsibility of negotiating a treaty of peace with England, "that the common right of fishing would in no case be given up"; "that it is essential to the welfare of all the United States that the inhabitants thereof, at the expiration of the war, should continue to enjoy the free and undisturbed exercise of their common right to fish on the Banks of Newfoundland, and all other fishing banks and seas of North America, preserving inviolate the treaties between France and the said States"; "that our faith be pledged to the several states that without their unanimous consent no treaty of commerce shall be entered into, nor any trade or commerce whatever carried on with Great Britain, without the explicit stipulation hereinafter mentioned. You are, therefore, not to consent to any treaty of commerce with Great Britain without an explicit stipulation on her part not to molest or disturb the inhabitants of the United States of America in taking fish on the Banks of Newfoundland, and other fisheries in the American seas, anywhere except within the distance of three leagues of the shores of the territories remaining to Great Britain at the close of the war. If a nearer distance cannot be obtained by negotiations, you are to exert your most strenuous endeavors to obtain a nearer distance in the

Gulf of St. Lawrence, and particularly along the shores of Nova Scotia ; as to which latter, we are desirous that even the shores may be occasionally used for the purpose of carrying on the fisheries by the inhabitants of those states."

Before actual negotiations for a treaty of peace with England were entered upon, innumerable difficulties had arisen to dishearten American legislators, and these difficulties tended to weaken the obligatory force of previous congressional resolutions on the subject. The war dragged on remorselessly, exhausting the slender resources of the country and discouraging the brave men who were sacrificing their all in the cause of freedom. To-day peace was in sight, to-morrow it seemed farther away than ever ; and the disheartened patriots realized too well that the English ministry was firm in its determination to withhold any fishery concessions. Other important concessions besides the fisheries had to be secured from England, and form a part of any treaty of peace—such as the navigation of the Mississippi River, the delimitations of boundaries, indemnities, etc. ; but first, and above all, independence, the primary object of the war, was to be obtained at any and all cost. The yielding of this concession alone, in the judgment of Congress, would be so distasteful to the mother country that it might not be well to jeopardize the treaty by making other demands scarcely less distasteful to England. Might it not prove unreasonable, or at least impolitic, to prolong a war begun for freedom, simply to keep inviolate a single commercial privilege which might be as well secured by subsequent treaty ? In a gloomy mood Congress therefore declared that, "although it is of the utmost importance to the peace and commerce of the United States that Canada and Nova Scotia should be ceded, and more particularly that their equal common right to the fisheries should be guaranteed to them, yet a desire of terminating the war has induced us not to make the acquisition of these objects an ultimatum on the present occasion." It was thus that in July, 1781, the instructions to Mr. Adams of 1779 were overruled, much to the chagrin of that zealous patriot.

In addition to the obstacles in the way of a probable retention of full fishing rights already mentioned, others of a most serious character suddenly presented themselves from an unexpected source. France had given to the struggling colonists not only moral support, but that substantial and material aid without which a successful issue of the war for independence would have been next to impossible. American friendship for France was sincere and profound. Confidence in her motives was without suspicion and undisturbed by doubt. American gratitude recognized the full measure of obligation due to an act of disinterested beneficence and kindness. In the progress of efforts toward peace, the disagreeable and startling fact became apparent that our ally entertained some schemes of self-interest hardly compatible with the generous motives which had been originally ascribed to her. Traces of French reserve in the proposed adjustment of questions growing out of the war were first detected in the matter of the fisheries; but the benefit of presumed innocence was for some time accorded to the action of the French Government, and its motives were ascribed to the accomplishment of ends not prejudicial to American interests. It subsequently came to light, however, that Count de Vergennes, the astute Minister of State at Paris, had carefully mapped out a course of action relating to the fisheries, in the event of American independence, which looked to the enjoyment of a monopoly of this valuable industry by France and Spain to the entire exclusion of the Americans. This seemingly inconsistent attitude of the French premier toward his ally across the ocean may be fully understood when considered in connection with the grand scheme he had planned for so shaping the destinies of the new republic as to hold them permanently under French influence. The people of America were to have "liberty," of course, but liberty under French domination. In no event did he propose to permit the growth of the new nation to interfere with the interests of his own country, it being his intention, on the contrary, to train his protégé into a subservient and useful ally of France. According to De

Vergennes, the territorial limits of the United States were to be confined to a narrow strip along the Atlantic seaboard; they were to be "circumscribed," he wrote, "with the greatest exactness, and all the belligerent powers [England, France, and Spain] must bind themselves to prevent any transgression of them." In the furtherance of his project to perpetuate the glory of France on the Western continent, and to humiliate his Anglo-Saxon enemy, he flattered himself upon having made an excellent beginning. By timely aid to the United States in its period of distress he had won the gratitude and confidence of the young nation, and it needed but the exercise of vigilance and political sagacity to guide its future steps in paths of his own making. As a guardian it was necessary to gain control of the nation's diplomatic bureau, and for himself to negotiate for his ward its treaty of peace with Great Britain. The young eagle's wings were to be clipped at once.

French diplomatic agents in Philadelphia exerted all their influence over Congress to bring about this end, and with such skill, be it said, that in July, 1781, Congress instructed the peace commission (now to be enlarged by the appointment of Jay, Franklin, Jefferson, and Laurens), to take no initiative in the coming negotiations for peace without the knowledge and consent of the king of France, and, "ultimately to govern ourselves by their advice and opinion, endeavoring in our whole conduct to make him sensible how much we rely on His Majesty's influence for effectual support." Madison bitterly denounced this resolution of Congress as a "sacrifice of the national dignity." About one year later an intercepted letter of Marbois, a French diplomat in the United States, to De Vergennes, when made public, aroused great and well-merited indignation, as it furnished the first real proof of French duplicity toward the United States. It had a wholesome effect in determining the course of action to be followed by the peace commissioners in Paris.

The letter is in part as follows: —

But Mr. Samuel Adams is using all his endeavors to raise in the State of Massachusetts a strong opposition to peace if the

Eastern States are not thereby admitted to the fisheries, and in particular to that of Newfoundland . . . and if the States should agree relative to the fisheries, and be certain of partaking of them, all his measures and intrigues would be directed toward the conquest of Canada and Nova Scotia; but he could not have used a fitter engine than the fisheries for stirring up the passions of the eastern people, by renewing the question which has lain dormant during his two years absence from Boston. He has raised the expectations of the people to an extravagant pitch. The public prints hold forth the importance of the fisheries. The reigning toast in the East is "May the United States ever maintain their rights to the fisheries." It has often been repeated in the deliberations of the General Courts, "no peace without the fisheries." However clear the principle may be in this matter, it would be useless, and even dangerous, to attempt informing the people through the public papers. But it appears to me possible to use all means for preventing the consequences of success to Mr. Samuel Adams and his party; and I take the liberty of submitting them to your discernment and indulgence.

Jefferson did not act upon the peace commission, and Laurens did so only at its close. Jay, who was then Minister at Madrid, had resided long enough abroad to become thoroughly imbued with a distrust in the genuineness of French and Spanish friendship toward his country, and he deprecated his instructions to abide by the wishes of any European sovereign. John Adams fairly blazed with indignation at the humiliating conditions placed by Congress upon himself and his associate commissioners, and he determined to rebel against the meddling interference of the French court, whose treachery to the United States touching the fisheries he thoroughly understood. Franklin, then United States Minister at Paris, had grown more complaisant to French intrigues, or possibly he feared them less than did his colleagues, but he nevertheless yielded to the proposals of Adams and Jay, and the negotiations were consequently carried on by the three American peace commissioners entirely upon their own responsibility, and without the aid or advice of De Vergennes or of the French court.

The firmness of these men in adhering to their ultimatum that a fishery clause granting ample rights to Americans

was one of the conditions of peace with England, and their courage in ignoring French interference, though done in open defiance of instructions from Congress, secured the excellent foundation upon which have rested all the fishery rights and privileges the United States has since enjoyed in Canadian waters. To John Adams especial credit is due. His steadfastness of purpose inspired his colleagues to share with him the risk of disobeying legislative commands in so important a matter, and of assuming the responsibility incurred in slighting the French court at a critical moment when foreign sympathy could ill be spared.

The discussions of the commissioners concerning the fisheries were long and tedious, and the opposition of the English to any satisfactory form of concession in relation to them was only gradually and with great difficulty overcome. Had the fishery interest been the only one involved, the matter might have been settled after a comparatively easy diplomatic struggle, but to retain the fisheries deprived the American negotiators of capital to draw upon in payment for the other equally valuable concessions which they demanded.

On one occasion, when the phraseology of the fishery clause was under discussion, an English commissioner objected to the word "right" of fishing instead of *liberty*, as a term obnoxious to his countrymen, to which Mr. Adams replied: "Gentlemen, is there or can there be a clearer right? In former treaties — that of Utrecht and that of Paris — France and England have claimed the right to use the word. When God Almighty made the banks of Newfoundland, at three hundred leagues distant from the people of America, and at six hundred leagues distant from those of France and England, did He not give as good a right to the former as to the latter? If Heaven, at the creation, gave a right, it is ours at least as much as it is yours. If occupation, use, and possession give a right, we have it as clearly as you. If war and blood and treasure give a right, ours is as good as yours. We have been continually fighting in Canada, Cape Breton, and Nova Scotia for the defence of this fishery, and

have expended beyond all proportion more than you. If, then, the right cannot be denied, why should it not be acknowledged and be put out of dispute? Why should we leave room for illiterate fishermen to wrangle and chicanery?"

As finally signed on September 3, 1783, Article III of the treaty of Paris stands as follows:—

It is agreed that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank, and on all the other banks of Newfoundland; also in the Gulph of St. Lawrence, and at all other places in the sea, where the inhabitants of both countries used at any time heretofore to fish; and also that the inhabitants of the United States shall have the liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use (but not to dry or cure the same on that island); and also on the coasts, bays and creeks, of all other of His British Majesty's dominions in America; and that the American fishermen shall have the liberty to dry and cure fish in any of the unsettled bays, harbours and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same, or either of them shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement, without a previous agreement for that purpose with the inhabitants, proprietors or possessors of the ground.

It will be observed, then, that in regard to the fisheries, very few privileges enjoyed by the American colonists (as British subjects) were denied to them as American citizens by the treaty of Paris. The Bank fishery was recognized by England to be beyond her legislative control, and therefore open and free to the world; likewise the fishery of the Gulf of St. Lawrence. The treaty rights to take fish in the in-shore waters of Canada were ample; all that marine area, including the bays and creeks of the Dominion coast, was left free to American fishermen. Two restrictions only were placed upon them, first, that they should not use the Newfoundland shores for purposes of drying or curing their fish,—and second, they should not, upon all the balance of the British-American coast (where such privileges were granted), so locate their stages as to molest or annoy the

inhabitants. This latter restriction was a proper and wise one, and could have called for no reasonable complaint. The withholding from American fishermen of the Newfoundland shores for the purpose of curing fish was regarded as unfortunate, for these being nearer the Banks were more convenient for the establishment of shore stations. Had American citizens been accorded this one additional right to the others acquired by the treaty, there would virtually have been no distinction drawn between American and English fishermen in their freedom of movements in Canadian territorial waters or on Canadian soil.

IV

At the close of the Revolutionary War, the fisheries were substantially annihilated, and their restoration to a condition of vigor was neither immediate nor rapid. An order issued by proclamation (July, 1783) in London, prohibited the importation of American fish into British West Indian ports. This action was a telling blow to the greatly weakened American industry, and adverse tariff regulations in various foreign markets added to the causes that retarded its growth. To offset these depressing foreign influences, efforts were made by Congress to stimulate the languishing fisheries by means of bounties. In 1789 an act was passed allowing a bounty of five cents per quintal on all dried, and five cents a barrel on all pickled (salted) fish exported, and, at the time, imposing a duty on fish imported into the United States. Even this encouragement seems to have been insufficient, for the fishermen of Gloucester soon after presented a petition to Congress setting forth a grievous story of their losses, with a prayer for further measures of relief.

The necessity of reviving the fisheries seems to have been generally accepted by the legislators of the period. The reasons given were not simply that the industry was in itself a valuable one and promised wealth to its followers, but higher considerations of national utility were advanced for its encouragement. President Washington, in 1790, an-

nounced that "our fisheries and the transportation of our own produce offer us abundant means for guarding ourselves against depending upon foreign vessels." The views of Congress are reflected in its reply to the President's message: "The navigation and the fisheries of the United States are objects too interesting not to inspire a disposition to promote them by all the means which shall appear to us consistent with their natural progress and permanent prosperity."

The fishermen's appeal was answered, and in 1792 a new law was created abolishing the bounties on exported fish, and in lieu thereof a specific tonnage allowance was made to all American vessels engaged in the fisheries. This law was more or less altered by subsequent legislative acts, until finally all bounties and allowances to fishermen were abolished in 1854. These various bounty acts had always met more or less opposition on constitutional grounds. A generation later, Senator Benton opposed them with all the vigor and strength which that parliamentary leader possessed. Further legislative measures were taken to improve the condition of the fishermen by the act of 1793 authorizing the customs officials to grant to fishing vessels licenses "to touch and trade" at any foreign port or place. The object of this act was to enable the fishermen to purchase in foreign ports, — and free of all duties, — needful supplies of salt, provisions, fishing gear, etc. This privilege was certainly of great benefit to the fishermen, who availed themselves of it to carry on regular trading operations in Newfoundland and in Canadian ports. Thus it soon led to abuses that later ushered in a series of diplomatic complications, and added to the "fishery question" new elements of controversy.

Despite these earnest efforts to infuse new life into the crippled fisheries, they rallied but slowly from the shock of war. Statistics of the yearly catches from 1789 to 1812 indicate a wavering increase in vessels and tonnage employed, but the fishermen had nevertheless reason to rejoice in fairly bright prospects for renewal of the prosperity they had enjoyed before the Revolution. When their hopes were about to be realized, the shadow of the approaching political

crises of 1812 depressed the fisheries. Jefferson's Embargo measures brought great distress to the fishermen, and the advent of war soon after drove them from the Banks, and completely paralyzed their industry.

V

Immediately following the withdrawal of the British forces from the United States at the close of the Revolutionary War, a strong dislike was manifested for the "Tories," or those who had remained loyal to England throughout the struggle for independence. Numbers of these disaffected people emigrated to Nova Scotia and to Canada; not a few of them established homes in Newfoundland. These disappointed men, no doubt nurturing feelings of resentment, regarded with jealous interest the operations of American fishermen in Canadian waters. As loyal emigrants making new settlements on the coasts of New Brunswick and Nova Scotia, they were naturally loath to recognize the rights of American fishermen under the treaty of 1783, namely, to use British shores for drying and curing their fish; and they were in a mood to record eagerly any transgression of privileges by their old enemies as they were always vigilant to detect them in misdeeds of any kind. These unfriendly settlers along the Canadian shores were largely instrumental, it is known, in causing the British colonies in 1807 to make protests to their home government against the conduct of the Americans; later, upon the outbreak of hostilities between England and the United States, and the consequent abrogation of all former treaties between those powers, they took the opportunity to urge upon the British Government a refusal to renew any fishing privileges whatever in their waters. These appeals, backed by many representations of the pernicious moral influences exerted by New England fishermen over the inhabitants of Nova Scotia and Labrador, through their evasions of custom duties, illicit trading, etc., soon convinced the British ministry that England had been far too generous for her own good in granting such extended

and valuable fishery rights to her seceded colonists. Accordingly, at the close of the War of 1812 (though before the battle of New Orleans), when the American peace commissioners arrived in Ghent for the purpose of making a new treaty with England, they were met at the outset by the assertion of the British commissioners that "it was thought proper in candor to state, that in relation to the fisheries, although it was not intended to contest the right of the United States to them, yet so far as respected the concessions to land and dry fish within the exclusive jurisdiction of the British, it was proposed not to renew that without an equivalent," and further, that "the British Government did not intend to grant to the United States gratuitously the privileges formerly granted by treaty to them, of fishing within the limits of the British sovereignty, and of using the shores of the British territories for purposes connected with the British fisheries." John Quincy Adams, speaking for the American commissioners, replied that they had not intended to mention the subject of fisheries, that question not being one of the subjects of difference in the war just concluded.

Although it had become apparent before 1812 that different conceptions of the force and character of the third article of the treaty of Paris were held in England and the United States, then for the first time, the opposing views, as to the exact nature of American claims to the inshore fisheries as expressed by that article, came face to face.

The English held that the liberties accorded the Americans by the third article of the treaty of 1783 to fish within the territorial waters of Great Britain and to land on the shores of Nova Scotia, to dry and cure fish, were in the nature of a grant or a concession, and were liable, as are all such treaty rights and privileges, to abrogation by subsequent war between the parties. The British commissioners assumed, therefore, that these inshore privileges had been terminated by the War of 1812, and that should the United States desire a renewal or modification of them, such could only be obtained through new treaty stipulations. They drew a distinction, however, between the fisheries on the Banks (or in

all waters lying without the marine jurisdiction of Great Britain) and those fisheries that were prosecuted within such marine jurisdiction (vaguely regarded then as all waters lying within three leagues of the shore). The former, they were willing to concede, belonged equally to all nations, — as fixed and permanent a right as the navigation of the high seas : the latter, the inshore fisheries, belonged to England alone, and any transfer of privileges to other nations by treaty to participate therein was necessarily in the form of a contract, — and contracts between nations are cancelled by war.

The American commissioners took a radically different view of the situation. It will be remembered that in 1782, when the treaty of Paris was being negotiated, John Adams, supported by the opinions of many prominent men of New England, had stoutly contended that these inshore fisheries of Canada, together with all landing privileges to cure fish, belonged to Americans, in equal right, as well as they belonged to England. They had fought and bled for them, and as American citizens they were entitled to them quite as much as were the Canadians who had chosen to remain British subjects. Mr. Livingstone, Secretary of State, in writing of the bank fisheries to Benjamin Franklin, January 7, 1782, said: —

The arguments on which the people of America found their claim to fish on the banks of Newfoundland arise, first, from their having once formed a part of the British Empire, in which state they always enjoyed, as fully as the people of Britain themselves, the right of fishing on these banks. They have shared in all the wars for the extension of that right, and Britain could with no more justice have excluded them from the enjoyment of it (even supposing that one nation could possess it to the exclusion of another), while they formed a part of the empire, than they could exclude the people of London or Bristol. . . .

Upon the same principle that Mr. Livingstone supported the American right to the Bank fishery, namely, previous enjoyment of them as British subjects, Mr. Adams and his colleagues claimed the inshore fisheries of Canada. He

maintained that these natural rights, enjoyed as British subjects before the Revolution, had never been yielded or lost by the war of independence, nor forfeited by the resulting changes in sovereignty over Canadian waters. As "tenants in common" with Great Britain, the Americans held all fishery rights in northeastern waters, both open and territorial, and by the "partition" of the territory of North America, effected in the treaty of 1783, these fishery rights were in no manner destroyed or abridged. He wrote some years later (1822): —

The inhabitants of the United States had as clear a right to every branch of the fisheries, and to cure fish on land, as the inhabitants of Canada or Nova Scotia. . . . the citizens of Boston, New York, or Philadelphia had as clear a right to these fisheries, and to cure fish on land, as the inhabitants of London, Liverpool, Bristol, Glasgow or Dublin; fourthly, that the third article was demanded as an ultimatum, and it was declared that no treaty of peace should be made without that article. And when the British ministers found that peace could not be made without that article, they consented, for Britain wanted peace, if possible more than we did; fifthly, we asked no favor, we requested no grant, and would accept none.

Following the same line of argument, Rufus King, in addressing the Senate in 1818, said that the fisheries "on the coasts and bays of the provinces conquered in America from the French were acquired by the common sword, and mingled blood of Americans and Englishmen — members of the same empire, we, with them, had a common right to these fisheries; and, in the division of the empire England confirmed our title without condition or limitation; a title equally irrevocable with those of our boundaries or of our independence itself."

In a celebrated pamphlet on the "Fisheries and the Mississippi," in which this controversy over American fishery rights is discussed at great length, John Quincy Adams said: —

As a possession it was to be held by the people of the United States as it had been held before. It was not, like the land parti-

tioned out by the same treaty, a corporeal possession, but, in the technical language of the English law, an incorporeal hereditament, and in that of the civil law a right of mere faculty, consisting in the power and liberty of exercising a trade, the places in which it is exercised being occupied only for the purposes of the trade. Now, the right or liberty to enjoy this possession, or to exercise this trade, could no more be affected or impaired by a declaration of war than the right to the territory of the nation. The interruption to the exercise of it, during the war, could no more affect the right or liberty than the occupation by the enemy could affect the right to that. The right to territory could be lost only by abandonment or renunciation in the treaty of peace, by agreement to a new boundary line, or by acquiescence in the occupation of the territory by the enemy. The fishery liberties could be lost only by express renunciation of them in a treaty, or by acquiescence, on the principle that they were forfeited, which would have been a tacit renunciation.

Again : —

. . . in consenting by that treaty [1783] that a part of the North American continent should remain subject to the British jurisdiction, the people of the United States had reserved to themselves the liberty, which they had ever before enjoyed, of fishing upon that part of the coasts, and of drying and curing fish upon the shores, and this reservation had been agreed to by the other contracting party.

In substance, then, the American position at Ghent, as regards the inshore as well as the open sea fisheries, was : that the people of the United States had done as much as the English to win and protect the fisheries ; that as British subjects they had always enjoyed them ; that at the close of the Revolutionary War a treaty (1783) had been made recognizing the independence of the United States and making a partition of the territory of North America ; that so far as the fishery rights were concerned, they were simply incorporeal hereditaments owned alike by England and the United States, as tenants in common in North America ; that the third article of the treaty of Paris recognized this to be the case, and by its terms simply defined those rights and recorded them, but did not create nor grant them to the United States ; that all these fishery rights belonging to the

United States' citizens as a natural heritage of their former allegiance to Great Britain (and being in no wise a concession from England) were by nature perpetual, and not liable to revocation by war between England and the United States,—and therefore they had not been lost by the War of 1812. Consequently, American fishery rights were not a proper subject for discussion or negotiation at that time.

The American commissioners went still farther to substantiate their contention that the inshore fisheries of Canada and the right to use Canadian shores for curing and drying fish belonged to the United States as an inviolable right. They maintained that as these liberties of fishing were not created but merely defined and recorded by the third article of the Paris treaty, that article, like all treaty clauses pertaining to matters of partition or boundaries or territory, was of that particular class of treaty articles which is permanent and not affected by subsequent suspension of friendly relations between the parties. Thus they considered their position doubly strengthened, and beyond question correct.

The arguments of Mr. Adams and the members of the commission who supported him were clearly unsound. While British colonists, the Americans certainly possessed all the rights of other English subjects in British territorial waters, and shared with them the obligations and duties which such possession imposed. These obligations had called for the protection of the fisheries against French aggressions, and the American colonists answered the call as a duty, and performed it well. After the war of independence, England retained Nova Scotia, Newfoundland, and Labrador, and as an inseparable condition, the jurisdiction over their marginal belts of ocean; the Americans ceased to be British subjects, and were at once relieved of all duties and obligations to defend English territory or protect English waters, and in a like manner they were certainly deprived of the privileges of ownership over such alien territory and waters. Had the contention of Mr. Adams been sound, the United States with equal justice could have pressed a claim for possession of Quebec or Halifax, for by the "common sword and min-

gled blood of Americans and Englishmen " those strongholds were won and defended. By the same argument the English could have claimed the right to navigate the Mississippi River, which had been conceded to them by the treaty of 1783, and which Mr. Clay (one of the commissioners at Ghent) declared to be forfeited by the War of 1812.

Again, had the United States an inherent and natural right to the inshore fisheries of Canada, and to the perpetual use of its shores, why had these shore privileges been limited by the treaty of Paris? Why had the United States accepted the privilege of curing and drying fish in Nova Scotia and Labrador, and relinquished it in Newfoundland? If American citizens had been entitled as of right to use a part of the Canadian coast, they were equally entitled to use all of it. On the Newfoundland coast, where shore privileges were most desired, and where long usage would have set up an easement or prescriptive title fully as well as to the Nova Scotia or Labrador coast, Americans had been denied all landing privileges.

Furthermore, a review of the instructions of Congress to the commissioners, who negotiated the treaty of Paris, develops the fact that it had not been the intention or object of the United States Government to insist upon a continuance of the inshore fisheries which had formerly been enjoyed as a right. Congress did insist on the right to fish on the " Banks of Newfoundland and other fisheries in the American seas, anywhere excepting within the distance of three leagues of the shores of the territory remaining to Great Britain at the close of the war, if a nearer distance cannot be obtained by negotiation." A full expression of the policy of the government in 1782 is given in a report of a committee of Congress on certain resolutions adopted by the legislature of Massachusetts touching the fisheries (1781). An elaborate argument is there set forth to demonstrate the freedom of the high seas, and to prove that the Bank fishery may not be properly appropriated by any power. These Banks, " the nearest point of which is thirty-five leagues distant from Cape Race, are too far advanced in the Atlantic

to be a dependence of the shores." Thus a distinction was at that time made between the Bank and the shore fishery. All expressions of Congress signifying a determination to retain the fisheries, at all hazards, refer only to the *open sea* fisheries; for at that period of uncertainty it was feared that England might even refuse to yield her pretended sovereignty over the Banks. The spirit of John Adams' instructions in 1782, as gathered from congressional actions previously taken upon the subject, was to insist as a right upon the freedom of the high seas for American fishermen, and to secure for them by negotiation the largest possible inshore privileges. Finally, it will be noted that in the third article of the treaty itself the word "right" is used in connection with the Bank and deep sea fishery, and the word "liberty" with reference to the shore fishery.

Failing to make good the doctrine that Canadian inshore fisheries belonged to the United States, not by treaty stipulation, concession or grant, but by natural and inherent right, the second contention of our commissioners at Ghent was equally bound to fail, namely, that the third article of the treaty of Paris belonged to that class of treaty obligations which are exempt from abrogation by war. The second proposition is in a measure a corollary to the first. It will readily be seen that all treaty stipulations must belong to one or the other of two classes. Those covering acknowledgments of independence, cessions or partitions of territory, delimitations of boundaries, acknowledgments of preëxisting rights and stipulations made in contemplation of war, — all of which may be regarded as executed stipulations, — are not subject to abrogation by war. All such as include mere grants of privileges, or rights, may be regarded as executory stipulations, and are necessarily terminated by war between the parties. Mr. Adams and his colleagues at Ghent clung persistently to the idea that the fishery clause of the Paris treaty belonged to the first class of treaty stipulations mentioned, and therefore that this in the same manner as the first article of that treaty (acknowledging the independence of the United States), and in the same manner as the second

article (defining the boundaries of the United States), stood inviolate and unaffected by the war that had just been concluded between the parties. In defending his position he afterward wrote:—

In case of a cession of territory, when the possession of it has been delivered, the article of the treaty is no longer a compact between the parties, nor can a subsequent war between them operate in any manner upon it. So of all articles, the purport of which is the acknowledgment by one party of a preëxisting right belonging to another. The engagement of the acknowledging party is consummated by the ratification of the treaty. It is no longer an executory contract, but a perfect right united with a vested possession, is thenceforth in one party, and the acknowledgment of the other is in its own nature irrevocable. As a bargain the article is extinct; but the right of the party in whose favor it was made is complete, and cannot be affected by a subsequent war. A grant of a facultative right or incorporeal hereditament, and specifically of a right of fishery, from one sovereign to another, is an article of the same description. It is analogous to a cession of territory, and is in fact a partial and qualified cession. The right is consummated by the ratification of the treaty. The possession is vested by the exercise of the faculty.

So that whether the third article of the treaty of 1783 be considered as an acknowledgment of preëxisting liberties or as a grant of them, to be exercised within British jurisdiction, it was in its nature permanent and irrevocable.

Only on the assumption that the treaty article in question created no new privileges but merely recognized an existing one, can Mr. Adams' somewhat ingenious argument be accepted as sound. However, as it is universally agreed that a nation has full jurisdiction over its marginal waters, Mr. Adams' contention must be regarded as wholly untenable. With a mind uninfluenced or clouded by considerations of the national needs and popular clamors of a period, one may often look back over the distance of years and obtain a clearer view of political conditions and of international questions than was possible to the men who were called upon to grapple with them. The very nearness to difficulties occasionally distorts the vision of great men and

leads them into absurdities of reasoning that afterwards seem almost inexcusable. John Quincy Adams was probably less influenced by the popular clamor of the day than by a certain family tradition in regard to the North American fisheries. His father, at Paris in 1782-83, had defied the consequences of disobedience to his country's commands, and had staked his reputation as a patriot in order to wrest from Great Britain those very fishery rights that he, the son, thirty-one years later at Ghent, found himself called upon to protect. As a New Englander he was saturated with the belief that the fisheries constituted the most valuable American industry. It was the calling which for generations his countrymen and their ancestors had followed almost without interruption. The fisheries formed the very basis of the great commercial interests of his own New England. Under no circumstances must they be forfeited through neglect or fault of his. Their loss meant to his people the greatest of calamities. Thus may one appreciate the mental attitude that permitted in John Quincy Adams so decided a warp in his reasoning upon this subject.

A satisfactory adjustment either of the fisheries, or the navigation of the Mississippi River, proved to be impossible, and it was finally agreed to sign a treaty that should remain silent on these two important subjects. Hence it is that no mention whatever is made of the fisheries in the treaty of Ghent (1814).

VI

The inability to reach an understanding at Ghent, in regard to the fisheries left that question in a most unsatisfactory condition. The war clouds of 1812 had no sooner blown away than the New England fishermen appeared in force in Canadian waters. A series of collisions with the Canadians immediately took place. English authorities, assuming that all American fishery privileges in British waters had lapsed by the war, arrested numbers of Boston and Gloucester

schooners on various charges of trespass, and condemned them as prizes in the Halifax courts. The disputed question of American fishery rights was frequently left to the rude arbitrament of American fishermen and the Dominion police, resulting in a severe strain upon the recently restored amicable relations between Great Britain and the United States. In the United States, where Mr. Adams' doctrine that American fishery rights had survived the war still obtained, feelings of anger and hostility to Great Britain grew more and more intense. Fortunately the tension was soon relieved by the Convention of 1818, wherein a compromise of the troublesome fishery question was effected. The first article of this treaty, the one relating to the fisheries, is as follows : —

Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof, to take, dry, and cure fish on certain coasts, bays, harbors and creeks, of His Britannic Majesty's dominions in America, it is agreed between the high contracting parties, that the inhabitants of the United States shall have forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland from the said Cape Ray to the Quirpon Islands; on the southern shores of the Magdalen Islands, and also on the coasts, bays, harbors, and creeks, from Mount Joly, on the southern coast of Labrador, to and through the Streights of Belleisle, and thence northwardly indefinitely along the coast, without prejudice however, to any of the exclusive rights of the Hudson Bay Company; and that the American fishermen shall also have liberty forever, to dry and cure fish in any of the unsettled bays, harbors, and creeks of the southern part of the coast of Newfoundland hereabove described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce forever, any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish on, or within three marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's do-

minions in America, not included within the above-mentioned limits. Provided, however, that the American fishermen shall be permitted to enter such bays or harbors for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying or curing fish therein, or in any manner abusing the privileges hereby reserved to them.

It will be observed that under this new arrangement Americans were permitted to fish in all waters falling within British marine jurisdiction, on the south coast of Newfoundland between Cape Ray and the Rameau Islands, and on the west and north coasts thereof between Cape Ray and the Quirpon Islands; on the southern shores of the Magdalen Islands and upon the Labrador coast from Mount Jolly northward indefinitely. The coasts of Nova Scotia, New Brunswick, Lower Canada, Cape Breton, more than half of the south coast, and all of the east coast of Newfoundland, were excepted from this grant of fishery privileges. It must be borne in mind that the Bank and all open sea fisheries were entirely free to the world, for at this time no nation pretended to control the high seas.

The privileges of landing for the purpose of curing and drying fish were withheld from the United States, except upon the south shores of Newfoundland from Cape Ray to the Rameau Islands, and except upon the coast of Labrador, — and here the right was only granted within unsettled bays and harbors. In all other bays or harbors of the Dominion, American fishermen were fully privileged to enter for certain designated purposes, — “shelter,” “repairing damages,” “purchasing wood,” and “obtaining water,” but for no other purpose whatever.

The adoption of these regulations was called in the United States a “compromise,” because American statesmen still contended that the United States owned the Canadian fisheries by a title as good as that of Great Britain, and that by the relinquishing of jurisdictional privileges over certain parts of the Canadian coast, and accepting England’s recogni-

tion of them on other parts of the coast, a genuine compromise had been effected. It is curious to note the light in which this fishery clause was regarded by eminent statesmen of the period, and indeed by many since. Never abandoning the idea of John Quincy Adams that the United States possessed and always had possessed an inherent and natural right to the inshore fisheries, a right that had survived the operation of war, they firmly believed, and as solemnly argued that, by the convention of 1818, England granted no fishery privileges to the United States, no rights of landing to cure fish or to obtain supplies, but, on the contrary, the United States had simply consented to *certain restrictions* on those rights and privileges always possessed. This erroneous conception of the spirit of the convention might be dismissed as an innocent historical or legal curio, had it not vitally affected the interpretation of the words, and later given rise to much misunderstanding between England and the United States.

The adherents to this view found proof of their contentions in that part of the fishery clause wherein the United States expressly "renounces forever any liberty," etc. They urged that in the use of these words Great Britain acknowledged those preëxisting and natural rights. The insertion of that phrase had been insisted upon by our commissioners, Messrs. Rush and Gallatin, and was reluctantly allowed by the British representatives, who were actuated by a strong desire to settle the troublesome quarrels of the fishermen as quickly as possible, and to remove the whole question from discussion. This fallacious theory of a "natural and inherent right" has never entirely lost its influence, even to the present day. It has been defended by the ponderous arguments of many legal writers, as it colored the deliberations of government officials.

With the promulgation of the new rules and regulations of 1818, the future of American fishermen seemed particularly bright. Congress encouraged them the following year with increased bounties. The fisheries had suffered greatly through the vicissitudes of war. Blissfully ignorant of,

and probably caring little for, the diplomatic wrangles over the legal nature of their rights, the fishermen took immediate advantage of the privileges just opened to them, and sought to restore their industry to a paying basis. In the course of a few years, however, a harvest of new and unforeseen troubles ripened to confound the men who had fishing interests in charge. Fresh quarrels grew alarmingly, and in the course of some years reached a degree of intensity that forboded another war with Great Britain. Happily such a calamity was averted in time, though not before the "Fishery Question" had given evidence of its liability sooner or later to embroil the nation in armed conflict.

In 1819, Parliament enacted a statute to carry out the provisions of 1818. This statute authorized local regulations to declare it unlawful for foreign vessels to take, dry, or cure fish within three marine miles of any coast, bays, creeks, or harbors in any part of His Majesty's dominion in America, not included in the limits of the treaty. It defined with particularity the privileges of American vessels in all such bays, creeks, harbors, etc., — *i.e.*, to enter only for the purpose of obtaining shelter, repairs, wood and water, — and it provided that if any vessels were caught violating, or preparing to violate, those laws, or that refused to depart from such bays, etc., when ordered to do so, they should be liable to certain enumerated punishments and fines. No objection could be found to this act itself, but in alleged conformity to it, and for the purpose of carrying out its provisions, the provincial legislatures of British America, from time to time, enacted series of laws relating to the fisheries that were far more stringent and rigid in their nature than justified by the original parliamentary act. These provincial regulations manifested a spirit of unfriendliness, and it was often asserted that they were executed with a severity and in a manner wholly unwarranted and improper. By the narrowest construction of the terms of the treaty they restricted the rights of Americans in every possible way. In accordance with these laws, the Canadian police authorities detained

American fishermen upon the most shadowy pretexts, and otherwise vexatiously harassed them, sometimes confiscating their vessels upon the merest suspicion of offence. While these burdensome regulations were unnecessarily severe, and perhaps maliciously enforced, it is more than probable that American fishermen were not always guiltless of the offences charged to their account.

A new form of fishery was at that period rapidly developing which brought into Canadian waters conditions entirely novel, and which, not having been anticipated by those who framed the convention of 1818, were not provided for in that instrument. Mackerel had appeared in vast quantities, and with them, in close pursuit, a large fleet of American schooners. The *modus operandi* of the mackerel fishery is entirely different from that of the cod fishery. The latter, even at that day, was carried on for the most part on the Banks, or in localities generally well removed from the debatable waters of British sovereignty. The men who confined themselves to cod fishing had less occasion to seek shore stations, either for bait or shelter. The mackerel fishery, on the other hand, constantly lured its followers within the three-mile limit of the Nova Scotia and New Brunswick shores, for it is the habit of these fish to hover about the shallower reaches of the sea near land. Large quantities of bait were cast upon the waters to tempt the fish within range; this process, of course, necessitated frequent landing at Canadian ports to procure fresh bait supplies; besides this, the nets employed in taking mackerel demanded for their proper preservation occasional drying upon shore. Now neither of these acts fell within the list of privileges guaranteed to American fishermen in Nova Scotia or New Brunswick by the treaty of 1818. As American fishermen were perhaps not overconscientious in these matters, disputes between them and the Canadians grew more and more frequent, and the situation soon became painfully acute. Numbers of New England vessels were held on charges of "fishing within the prescribed limits"; "hovering within shore during calm weather without ostensible cause, having on board

ample supplies of wood and water"; "lying at anchor and remaining inside of bays to clean and pick fish"; "selling goods and buying supplies"; "landing and transshipping cargoes of fish."

The fishermen of the United States were privileged by the treaty to take fish of every kind on the southern shores of the Magdalen Islands. This involved the herring fishery, and herring are certainly included in the comprehensive term — "fish of every kind." From the peculiar mode of taking this kind of fish, resort to the shore was necessary for hauling seines and constructing weirs, but the Canadian authorities remained inflexible in their determination to prevent such landing. It is true that on these islands no landing privileges were expressly guaranteed in the treaty, but it was contended in Washington that as the fishery of the Magdalen Islands was principally for herring, — a mode of fishery carried on from the shore, — the right to prosecute it at all must of necessity presuppose the right to use the shore. At all events, whether or not landing privileges are inseparable from the right to take herring, American fishermen continued to land on the Magdalen Islands, despite the opposition of the natives. A petty warfare resulted that kept full the measure of ill-feeling between New England and Canada.

A subject that provoked much discord, and that soon involved the two powers in another diplomatic controversy, arose from opposing theories entertained in Great Britain and the United States concerning the line of "three-mile limit" as applied to the bays and harbors of British America. Several American vessels, including the *Washington* in 1843, had been seized within the Bay of Fundy and other "bays" of the coast, at a greater distance than three marine miles from the shore. The Canadian authorities, to make sure of their position in thus seizing foreign vessels outside a three-mile line from the shore, had appealed to the crown lawyers at London to ascertain definitely whether Americans had a right, under the treaty of 1818, to fish in the bays of Fundy and of Chaleurs, or to navigate the Strait of Canso; or, in

other words, to learn whether the doctrine of "Headlands" applied to these great bodies of water. The reply of the queen's counsel assured them of their undoubted right to exclude all foreign vessels from fishing in any of the larger bays of British America. "Except," they wrote, "within certain defined limits, to which the query put to us does not apply, we are of opinion that, by the terms of the treaty, American citizens are excluded from the right of fishing within three miles of the coast of British America; and that the prescribed distance of three miles is to be measured from the headlands or extreme points of land next the sea of the coasts, or of the entrance of the bays, and not from the interior of such bays or inlets of the coast; and consequently that no right exists on the part of American citizens to enter the bays of Nova Scotia, there to take fish, although the fishing, being within the bay, may be at a greater distance than three miles from the shore of the bay, as we are of opinion that the term 'headland' is used in the treaty to express the part of the land we have before mentioned, excluding the interior of the bays and inlets of the coasts."

Although the term "headland" does not appear in the instrument referred to, the British interpretation of the "three-mile limit," as applied to all harbors, bays, or indentations of the coast, was made clear by this decision of the royal counsel.

It was held in the United States that the phrase "within three marine miles of any of the coasts, bays, creeks, or harbors," indicated an imaginary line three miles distant from and following the sinuosities of the shore. Thus all bays over six miles wide at their entrances would be free to their fishermen, except, of course, within three miles of shore. This question became a pressing one about 1840, and precipitated a lengthy discussion between Washington and London. Theoretically, the question of "headlands" has never been definitely settled, and the many authorities in international law furnish as yet no fixed rule for guidance. In general it may be said that the tendency of the law of nations is to restrict the extent of marine jurisdiction. In the matter

of harbors and bays, international usage has long established the propriety of reserving within the limits of national jurisdiction bodies of water, or arms of the sea, the entrances to which from the ocean may exceed six miles in width. Many examples of this can be found in England and France; in the United States no one doubts the legality of our claim to the full jurisdiction over Chesapeake and Delaware bays, and over Long Island Sound, all of whose entrances from the open sea measure more than six miles from headland to headland. An approximate rule only may be formulated respecting the length of the line from headland to headland that may reasonably be claimed to form a divisional line between the open ocean and jurisdictional waters. This may be somewhat vaguely stated as double the length of a cannon shot; or, in other words, all bays, recesses of the sea, or inland waters connected with the ocean, whose entrances may be defended by cannon placed upon the opposing headlands, are properly subject to the jurisdiction of the nation possessing their shores.

The English construction of the terms "three marine miles of any of the coasts, bays," etc., was undoubtedly correct, so far as that principle governs the smaller indentations of the seacoast, but the gross error in their contention lay in the effort to include within the definition of "bays" such great bodies of water as the Bay of Fundy or the Bay of Chaleurs. The distances from headland to headland at the entrances of these great estuaries measure no less than sixty miles, clearly excepting them from the most liberal designation of closed seas.

The British Government, however, showed some signs of relenting, though not of receding from the position it had taken regarding the closed nature of the Bay of Fundy. In 1845 Lord Aberdeen announced that out of considerations of courtesy Great Britain would yield to the United States the right of her fishermen in that bay, "provided they do not approach, except in the cases specified in this treaty of 1818, within three miles of the entrance of any bay on the coast of Nova Scotia or New Brunswick." Mr. Everett, the Ameri-

can Minister to the court of St. James, very properly declined to receive this privilege as a favor, but reiterating the American claim, he explained that it was "not for the sake of detracting from the liberality evinced by Her Majesty's Government in relaxing from what they regarded as their right, but it would be placing his own government in a false position to accept as a mere favor that for which they had so long and so strenuously contended as due them from the convention."

The colonists of Nova Scotia and New Brunswick were greatly disturbed by Lord Aberdeen's proposed "concession." Fearing it indicated a weakening in the face of American contentions, and that it might perhaps presage a more general yielding of all the large bays of the Dominion to the operations of foreign fishermen, they hurriedly despatched an envoy to London, who appeared before the colonial office with representations "of the injurious consequences certainly to result to Her Majesty's American subjects, were the negotiations with Mr. Everett to be concluded on the basis proposed." The policy of the colonial secretary was accordingly abandoned, and the Bay of Fundy was again declared to be a closed sea. The vexatious shipping regulations of the Dominion were even more strictly enforced than before; seizure of American vessels was continued; and the animosity which had been smouldering in New England against its northern neighbors nearly blazed into war.

The Canadians, on their side, were thoroughly indignant at what they considered the persistent lawlessness on the part of American fishermen, and they displayed their resentment in still another form. The Strait of Canso, between Nova Scotia and Cape Breton, affords a shorter and safer route to vessels making the Gulf of St. Lawrence from the south. This narrow passage is in certain places not more than a mile in width. When the navigation of two seas is free, the navigation of a channel connecting them should also be free, although it may for certain reasons be made subject to a toll regulation. The Canadians insisted that the Strait of Canso fell within the description of territorial waters, and they consequently denied the right of passage through it to

American fishing vessels. American fishermen were not justified in tarrying in the strait or fishing therein, but its prohibition merely as a channel of communication was distinctly an unfriendly act.

The affair of the *Washington* had not been forgotten; claims for indemnity were presented by her owners and the matter was laid before the British authorities. In 1852 this claim along with others was referred to a commission in London. By decision of an umpire, the Bay of Fundy was declared not to be a *mare clausum* within the meaning of the treaty of 1818. In this matter, then, the American contention was sustained, and one of the unhappy subjects of controversy growing out of the fisheries was laid at rest.

About this time (1847-54) commercial relations with the Canadian provinces were beginning to develop along new lines. The free-trade policy of England had opened her ports to the world's trade, and this to a large extent had deprived the Dominion of her most valuable markets; and her merchants hopefully turned to the United States. To enter American markets with their products became to them an object of prime importance. In 1847 overtures were made to Congress for reciprocity, Canada promising full freedom to American fishermen in return for a remission of tariff duties upon her fish. For several years Congress refused to consider the question, and the colonies vented their displeasure by an increased naval force to patrol their waters and terrorize American fishermen. It was soon suspected that there was a method in this madness of a Dominion navy, and the attempt, supposed or real, to coerce the United States into a reciprocity treaty, by annoying her fishermen, provoked an animated discussion in Congress. Mr. Hamlin, of Maine, declared that the sending of a naval force to the fishing grounds, pending negotiations, was "nothing more nor less than to compel the United States to legislate under duress," and to this he, for one, was unwilling to submit. A growing sentiment manifested itself to despatch to Canadian waters a naval force of equal proportions. Mr. Webster promised the people of Massachusetts that the

administration would protect the fishermen, "hook and line, bob and sinker." An American war vessel was sent to the scene ; the relations of the two countries became most critical and war was again predicted. When popular excitement was running high, the Governor General of Canada, Lord Elgin, came to Washington (1854) for the purpose of making a commercial treaty with the United States. It was a most inopportune time for the success of his mission, not only on account of the ill-feeling throughout the East toward Canada and the decided opposition in Congress to any form of reciprocal trade relations with her, but it was also the moment when political parties in the United States were absorbed in a desperate struggle over the Kansas-Nebraska Bill, and were too deeply agitated by the threatening aspect of the slavery question to give willing heed to less important affairs. Notwithstanding these obstacles, Lord Elgin succeeded. In the short space of a fortnight, a treaty "Extending the Right of Fishing and Regulating Commerce and Navigation between the United States and the British possessions in North America," was signed (June 5, 1854).

VII

Up to this point in the history of the fisheries, the discussions relative to the rights and liberties of citizens of the United States in Canadian waters, and all negotiations looking toward larger British concessions, had been almost wholly free from entanglement with the many concurrent diplomatic questions between Great Britain and the United States. With the exception of that famous dispute concerning the navigation of the Mississippi River, which had been for a time associated with it, the fishery question was fought out alone, and upon its own merits. By the year 1854, the most important of the legal points involved in the old controversy had been disposed of. Although the doctrine of "inherent and natural right" to the fisheries still found its supporters, those notions had been practically abandoned, and the rights of American citizens in Canadian waters were admittedly

based upon the convention of 1818. England had receded from her contention of *mare clausum* in regard to the Bay of Fundy. Barring some minor disputed points, there existed between the two governments a fairly good understanding as to the broad principles of law underlying the question. In future, American rights in the inshore waters, and upon the shores of Canada, were to become matters of purchase, and the whole fishery question, with its record of strife and contention, was transferred from the domain of law to that of political economy. What are the fisheries worth to New England, and what will be a suitable *quid pro quo* were the queries to be answered. The compensation Canada most desired for the freedom of her shore waters was commercial favors. The fisheries, therefore, became associated with commercial reciprocity, and the two questions have become so thoroughly associated, that to-day they cannot well be considered separately. Although those larger and more serious disagreements which had formerly characterized all negotiations concerning the fisheries, and which had rendered their successful termination so difficult, were removed, minor issues of a legal nature were yet to appear, and to produce at times a high degree of irritation.

The treaty of 1854 permitted a free exchange of nearly all the land and sea products of Canada and the United States. The first article relating to the fisheries is as follows:—

It is agreed by the high contracting parties that in addition to the liberty secured to the United States fishermen by the above-mentioned convention of October 20th, 1818, of taking, curing, and drying fish on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty to take fish of every kind, except shell fish, on the sea-coasts and shores, and in the bays, harbors, and creeks of Canada, New Brunswick, Nova Scotia, Prince Edward's Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land upon the coasts and shores of those Colonies and the islands thereof, and also upon the Magdalen Islands, for the purpose of drying their nets and

curing their fish; provided that, in so doing, they do not interfere with the rights of private property, or with British fishermen, in the peaceable use of any part of the said coast in their occupancy for the same purpose.

By the second article, Canadian fishermen were accorded similar privileges in American waters north of latitude 36°.

With the sole exception of taking "shell fish," the Americans were practically placed upon the same footing with British subjects in the prosecution of the fisheries in Canadian waters. By the fifth article it was stipulated that the treaty "is to remain in force for ten years and further, until the expiration of twelve months after either party shall give notice of a wish to terminate the same."

The effect of this agreement upon American fishermen was almost magical. Their disputes were immediately forgotten, and harmony reigned. In Canada, where formerly the American fishermen had been regarded as enemies, they were now welcomed as the best of friends. The Canadians rejoiced in the new and extensive markets opened to their produce, and their trade soon quadrupled. Nova Scotia and New Brunswick entered upon a period of extraordinary prosperity, and their fisheries leaped at a bound from conditions of adversity to those of great prosperity. But such delightful tranquillity upon the fishing grounds was not destined to last many years; a variety of causes led to the abrogation of the treaty of 1854 by the United States at the end of the stipulated ten years. The first note of alarm was sounded by the Maine and Massachusetts fishermen themselves, who began to complain that the free admission of Canadian fish into the United States crippled their own industry. Owing to cheaper labor, and their greater proximity to the fisheries, the Canadians were enabled to undersell the New England fishermen in the Boston markets. The extent of the free list of Canadian products was so great that it largely curtailed the revenues the government needed. Senator Sherman estimated this loss upon the single item of lumber to be \$5,000,000 a year. It soon became evident that the price being paid Canada for the freedom of her fisheries was too great.

Notwithstanding these very urgent reasons for altering the laws at the end of the stipulated ten years, it is probable that the regulations would have continued in force for a longer period had it not been for the Rebellion in the United States. At the beginning of the Civil war trade conditions in the United States materially changed. The necessary increase of taxes, together with radical changes in currency values, producing increased cost of labor, enabled the Canadian farmer to supplant the American in his own markets. The unfriendly attitude of the Canadians toward the Government during the civil conflict furnished an additional incentive to withdraw the advantages which the treaty of 1854 concededly gave them. The Canadians had exhibited a marked disposition to profit by the difficulties of the United States; Montreal and Quebec harbored the most virulent enemies of the Northern cause, and at one time the Provinces were suspected of contemplating the seizure and annexation of Maine.

Notice was given in March, 1865, and the following year the treaty was terminated. With the abrogation of the reciprocity treaty, the provisions of the agreement of 1818 again came into force, the stipulations contained in the treaty of 1854 having been based upon and declared to be "in addition to those of the convention, of 1818." Therefore the old scheme of restricting American fishermen to certain limited areas of inshore waters of Newfoundland, to the coastal waters of Labrador and to the southern shores of the Magdalen Islands, together with contracted landing privileges, was revived.

The Canadians were greatly disappointed by the recession of the reciprocity treaty. The largely increased volume of their export trade and the gratifying prosperity of their fisheries, both directly resulting from the freedom of the American markets, immediately declined and withered. Referring to economic conditions in Nova Scotia, the editor of the *Halifax Chronicle* said that from the abrogation of the reciprocity treaty, "we have retrograded with the most frightful rapidity." Bitter complaints of the "selfish policy" of the United States arose from every side.

With the return to those conditions which had existed prior to 1854, the same old quarrels and encounters among the fishermen reappeared. Lord Monck, the Canadian Governor General, promptly issued notice to Americans that inasmuch as their general fishery rights had ceased, any infractions of the laws relating to them would forthwith be severely punished. Trouble began to threaten even before the close of the first fishing season. The Canadians thereupon adopted a license system granting full fishery privileges to American schooners on payment of an annual tax. New England skippers generally availed themselves of this arrangement, but each succeeding year the price of licenses was increased (50 cents a ton in 1866, \$1.00 in 1867, and \$2.00 in 1868), until by the year 1869 the duty had virtually become prohibitive, and American fishermen refused to pay it.

The various provinces of Canada having consolidated into the Dominion of Canada, the Parliament at Ottawa, in 1868, issued in reference to the fisheries a new code of laws which was thought by Americans to be needlessly severe. Canadian maritime officials redoubled their vigilance; as a result a large number of New England fishing smacks were captured, and they generally suffered the penalty of forfeiture. The fishermen's quarrels assumed constantly increasing violence, and so much bitterness was aroused in the New England States that open rupture with England again seemed probable. In evident desperation an order was issued in 1870 by the Governor General of Canada to the effect "that henceforth all foreign fishermen shall be prevented from fishing in the waters of Canada." To enforce this questionable edict, the Dominion assumed the expense of fitting out cruisers to patrol the waters of Nova Scotia, especially those waters in and about the Bay of Fundy, where, it was alleged, American captains purchased bait and supplies in open violation of the law. Four hundred American vessels were boarded, and of these fifteen were detained and afterward condemned. When the situation had become most threatening, the fishery question was once more set at rest by the treaty of Washington (1871).

VIII

In 1870, a number of Anglo-American claims growing out of depredations committed during the war had accumulated, and were pressing for adjudication. These claims were gathered together and by the agreement of a joint high commission were referred to various boards of arbitration. It was an opportune moment to settle the fishery dispute, which, true to its old-time traditions, had reawakened and demanded an immediate settlement. It therefore fell in with the other issues under discussion at that time and the subject was included in the comprehensive Anglo-American treaty of 1871.

The eighteenth article of this latter instrument renewed the provisions of Article 1 of the reciprocity treaty of 1854, it being further stipulated in the treaty that it should remain in force for a period of ten years, and for two years after notice of its termination by either party; Article 19 extended the privileges of fishing in the territorial waters of the United States as far down as the 39th degree of latitude; Article 21 provided for the free admission into American and Canadian ports of fish and fish oil. During the negotiation of the treaty, the United States commissioners offered to pay to Canada the sum of \$1,000,000 in return for full American privileges in their inshore fisheries in perpetuity. This sum was thought by the commissioners tendering it to be greater than the real value of these inshore fisheries, but the amount was probably not too great for a positive guarantee of freedom from further molestation. The offer was declined by the English commissioners as insufficient in amount, but the discussion of a money consideration led to the insertion in the instrument of the following article (22d):—

Inasmuch as it is asserted by the Government of Her Britannic Majesty that the privileges accorded to the citizens of the United States under Article 18 of this treaty are of greater value than those accorded by Articles 19 and 21 of this treaty to the subjects of Her Britannic Majesty, and this assertion is not admitted by

the Government of the United States, it is further agreed that commissioners shall be appointed to determine, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles 19 and 21 of this treaty, the amount of any compensation which, in their opinion, ought to be paid by the Government of the United States to the Government of Her Britannic Majesty in return for the privileges accorded to the citizens of the United States under Article 18 of this treaty; and that any sum of money which the said commissioners may so award shall be paid by the United States Government, in a gross sum, within twelve months after such award shall have been given.

Article 23 provided that the three commissioners proposed in the previous clause should be appointed, one by the President of the United States, one by the queen of England, and the third conjointly by the two; though in case they failed to agree upon some one within three months, the choice of the third commissioner should then fall to the Austrian Ambassador in London.

It will therefore be observed that by this treaty the Canadians secured one of their most cherished desiderata, — the abolition of all United States customs duties upon the products of their fisheries. The American fishermen in return gained perfect freedom in Canadian inshore waters, — though at what seemed to them to be a ruinous cost, *i.e.* free Canadian fish; they had already realized their inability to compete successfully upon even terms with Canadian fishermen.

Believing that their government had given too great a price for a free Canadian fishery, the New England fishermen thought it simply preposterous that the United States Government should be willing to pay in addition, a money consideration.

The agreement to leave to an Austrian (under certain conditions) the choice of a member of this proposed board was unfortunate. It might reasonably have been feared that a selection from Vienna would have been prejudiced, as the ambitions of the house of Hapsburg had but recently been frustrated by the United States in the threat to expel

Maximilian and his French army from the Western continent. The United States Government realized the blunder too late, and in the attempt to free itself from the mistake of its commissioners, it fell into even greater difficulties. The acting Secretary of State, Mr. J. C. Bancroft Davis, proposed to the British Government the names of a number of foreign ministers in Washington whose knowledge of the English language qualified any one of them to act as the third commissioner in question. The name of Mr. Delfosse, the Belgian Minister, had been purposely omitted from the list, for the reason that the intimate political relations between England and Belgium (strengthened by the ties of close kinship in their royal families) seemed to disqualify any Belgian from acting in such a diplomatic capacity. Lord de Grey, one of the British commissioners who had signed the treaty of Washington, had given it as his opinion that Belgium and Portugal need not be considered in this connection, for their treaty arrangements with England "might be supposed to incapacitate" their representatives from acting upon such a commission. A desire became evident on the part of the British Minister in Washington to delay the choice of a third arbitrator until the end of the stipulated period, when the selection would fall into Austrian hands. Finding that the United States entertained objections to Mr. Delfosse, the English Government accordingly offered him as their choice, no doubt anticipating a lengthy discussion which would waste time. Upon further request to name some other person for neutral member of the board, the British premier suggested that the American and British Ministers at The Hague should select jointly some Dutch subject, but the recently appointed American Minister to that capital felt his inability, through a lack of acquaintance with the people, to make an intelligent choice; so that scheme was abandoned. Mr. Thornton, the British Minister in Washington, wrote that circumstances seemed to point either to the selection of Mr. Delfosse or to the alternative provided for in the treaty. The three months' allotted time was about to expire, and there appeared to be no escape from an appointment by the

Austrian. An extension of time, however, was agreed upon, for Canada, still anxious for reciprocity, had sent proposals to Washington for a new treaty of commerce and fisheries which would do away with the proposed board of arbitration, and entirely dispense with all additional compensation for the freedom of her fisheries. A draft of treaty was presented, the provisions of which almost totally removed protective duties from Canadian products, but guaranteed in return perfect freedom to American fishermen. The proposition was submitted to the Senate in 1874, and met with an unfavorable report the following year. The matter of the unselected commissioner accordingly revived.

The stipulated time as extended had passed, and in 1875 the British premier requested an identical note to the Austrian Ambassador in London, asking him to name the third commissioner. For various reasons the correspondence dragged on for over a year without results, but at length the Secretary of State, finding himself between Scylla and Charybdis, and being exceedingly desirous of closing the matter as quickly as possible, decided that Mr. Delfosse's selection would likely prove the lesser evil of the two; he accordingly suggested to the British authorities, in 1877, that the United States would not oppose the appointment of the Belgian if the British Government still desired his selection. It was agreed, however, upon a request from London, that in conformity with the treaty stipulations, Count Beust, the Austrian Ambassador at London, should name Mr. Delfosse, — which he proceeded to do at once.

Thus the United States was placed in the unfortunate and wholly false attitude of having requested Mr. Delfosse's appointment, and was therefore all the more hopelessly estopped from afterward excepting to any reward he might see fit to make. Much adverse criticism was expressed in the United States when all the correspondence was published, which brought to light the clever diplomatic tactics of Great Britain in taking advantage of the American commissioners' blunder.

(1871) in thus leaving the choice of the third arbitrator to one whose feelings toward the United States might be unfriendly.

Both Count Beust and Mr. Delfosse were probably unaware of the proceedings that had taken place between the English premier and Mr. Fish, relative to the selection of a third commissioner. The former would doubtless have evinced some delicacy in venturing to propose Mr. Delfosse; and the latter, had he felt that he was *persona non grata* in this connection, would certainly have declined to serve.

The board convened at Halifax, June 15, 1877. The commission was composed of Sir Alexander Galt (British), E. H. Kellogg (American), and Mr. Delfosse as the neutral member. Secretaries, official reporters, and a host of clerical assistants, together with an array of counsel, combined to make an imposing gathering.

Newfoundland at once presented a claim for compensation to the amount of \$14,880,000, for privileges enjoyed by American fishermen in her waters and upon her shores during the past twelve years, but the argument in support of this claim was met by the answer that such demands were fully covered by the remission of American tariff duties upon her fish. The American counsel further insisted that the jurisdiction of the board was restricted to the duty of ascertaining how much more valuable, if more valuable at all, free Canadian fisheries were to the United States than similar privileges in American waters combined with free importation of Canadian fish into the United States were to the Canadians. On November 23 of the same year the award was found, the following verdict being rendered, together with the dissenting opinion of the American commissioner:—

The commissioners appointed, etc. . . . Award the sum of five millions five hundred thousand dollars in gold to be paid by the government of the United States to the government of Her Britannic Majesty in accordance with the provisions of the said treaty.

Signed at Halifax, etc. . . .

MAURICE DELFOSSE.

A. T. GALT.

The United States Commissioner is of opinion that the advantages accruing to Great Britain under the treaty of Washington are greater than the advantages conferred on the United States by said treaty, and he cannot therefore concur in the conclusions announced by his colleagues.

And the American commissioner deems it his duty to state further that it is questionable whether it is competent for the board to make an award under the treaty except with the unanimous consent of its members.

E. H. KELLOGG,

Commissioner.

News of the award was received in the United States with astonishment, the feeling being general that the country had been wronged. The sum was grossly excessive. It was estimated that the remission of duties on Canadian fish cost the government about \$350,000 yearly, and this added to the sum awarded at Halifax made the total cost of Canadian fisheries for twelve years about \$10,000,000. The true value of the fisheries of Canada was computed to be worth about \$25,000 a year. The Senate committee on foreign affairs chafed under the injustice of the decision, and its members began to consider the suggestion in Mr. Kellogg's dissenting opinion that a majority decision alone was insufficient to bind the United States. A disposition was quite manifest to evade, if possible, the payment of so unreasonable a sum. However, the feeling finally prevailed that it was a debt of honor, and the award was paid. A resolution was immediately taken to abrogate the treaty at the "earliest period consistent with Article 33" of that instrument.

The treaty of Washington had gone into effect July 1, 1873; notice was given at the end of the stipulated ten years, and the treaty articles referring to the fisheries were terminated on July 1, 1885 — two years later. Thus the status of the fishery question reverted for the third time to the conditions of the convention of 1818.

Before the abrogation of the fishery clauses of the treaty of Washington, an incident occurred in Canadian waters (January 6, 1878), that brought to the attention of the

State Department a new difficulty connected with the subject. One Sunday some American fishermen were hauling their herring seines near the settlement of Long Harbor in Newfoundland. It appears that a local statute was in force forbidding such desecration of the Sabbath. A native mob, whose religious scruples had been offended, set upon the luckless Americans and drove them from the region. This adventure brought to light the variance between the imperial law and local regulations. The question at once arose — Which are paramount, treaty rights or local ordinances? The British Foreign Office at first contended that the treaty was made subject to all local laws or harbor regulations that affected all people alike, but ultimately acknowledged the supremacy of treaty rights, and consented to have all local laws at variance with them suspended. The Secretary of State, Mr. Evarts, urged that “this government conceives that the fishery rights of the United States conceded by the treaty of Washington, are to be exercised wholly free from the restraint and regulations of the statutes of Newfoundland.” The matter was closed by Great Britain paying the sum of \$75,000 damages to the outraged American fishermen.

IX

With the abrogation of the treaty of Washington in 1885, and the consequent revival of the numerous restrictions imposed by the convention of 1818, it was fully expected that the quarrels of the fishermen would begin anew. To mitigate the losses the Americans would undoubtedly suffer by the sudden withdrawal of privileges they had enjoyed in the midst of a fishing season, an agreement was made with Canada to continue in operation the fishery clauses of the Washington treaty during the remainder of the season of 1885. The Dominion cherished the hope that another reciprocity treaty would soon be made, and negotiations were at once entered upon with that object in view. President Cleveland in his annual message of December 8, 1885, proposed in

the interests of "good neighborhood," that a joint high commission should be appointed, "charged with the consideration and settlement upon a just, equitable, and honorable basis, of the entire question of the fishery rights of the two governments and their respective citizens on the coasts of the United States and British North America." The fishery interests, he insisted, were intimately related to other general questions dependent upon contiguity and intercourse. This of course pointed directly to reciprocity, but the New England fishermen protested so loudly against any change of arrangements, that the President's recommendations to Congress were adversely considered.

To understand clearly the opposition of American fishermen in 1885 to any change in the regulations of 1818 that placed upon them so many disabilities, and against which they had so steadily clamored for years, a glance at the changing character of the fisheries becomes necessary. In the earlier part of the century, American fishermen were almost wholly dependent upon their shore privileges, both for the purpose of refitting, obtaining supplies and bait, and for drying and curing their catch. The fishing grounds along the Maine coast, having long before become practically exhausted, the Canadian inshore waters were next exploited, and the most liberal privileges to fish in such waters were sought by the Americans. Gradually, however, American cod fishermen withdrew to the richer fisheries of the Banks, employing larger vessels and taking with them the necessary supplies of salted or iced bait to last the entire cruise. Thus they became more and more independent of the shore privileges they had formerly sought. The drying and curing process having also been abandoned for better methods, the necessity for landing on Canadian soil was again lessened.

The sudden rise of the mackerel fishery (about 1850), again made inshore privileges of value to a class of fishermen that followed it exclusively, for, as already observed, this business was for the most part carried on within British territorial waters. Even before this time (1885), the use

of the purse seine had supplanted the old method of "chumming" for mackerel. This was carried on in deeper water, and without the use of bait. Halibut fishing in the vicinity of the provincial shores was at one time profitable, but it, too, was found to yield better results in offshore waters. Herring alone remained in 1885 a purely inshore fishery, but its importance was relatively small; owing to constant disagreements with the natives, with whom this occupation brought our men in close contact, the practice of purchasing herring from the provincial fishermen gradually came to be adopted. Thus in 1885 the shore privileges, for which American statesmen had so strenuously contended, had become of comparatively little value to American fishermen. But the privilege of entering Canadian ports for certain purposes was still desirable, for all the contingencies of long voyages and lengthy sojourn upon the Banks could not always be provided against before departure from home. Continued boisterous weather often prevailed, and on account of the delays caused thereby, together with accidents that are likely to occur in such exposed stations, the right to enter any nearby harbor to refit or purchase fresh supplies was useful though not perhaps absolutely necessary. These privileges were already provided for by the treaty of 1818, except the one privilege of buying bait. While this single privilege was less important in some respects than the others, it was still considered to be worth a price, though not so great a price as the remission of duty upon Canadian fish. Aside from the quarrels in which these fishermen so often found themselves involved when they visited Canadian ports, American skippers found other good reasons for abstaining, as far as possible, from the necessity of making port during the fishing season. A run ashore consumed valuable time, and invariably demoralized their crews; the more frequent the calls in port the less efficient became their men. Not a few of the shrewder captains of "bankers" would have quietly welcomed the excuse to offer their men that all landing on Canadian shores was prohibited.

It will be remembered that the treaty of 1818 gave the

right to American fishermen to enter any of the harbors of British America for the purposes of shelter, repairing damages, purchasing wood and obtaining water, but "for no other purposes whatever." The Dominion Government interpreted this phrase technically and strictly. The seizure of the American vessel *David J. Adams* in Digby Harbor, May 7, 1886, for landing and purchasing bait and ice, was followed soon after by several other seizures upon the same charge. The trial of these alleged culprits brought to the front the limitation of privileges in Canadian ports which was imposed upon Americans by the Dominion laws as based upon the treaty of 1818.

The United States contended that while it was perfectly true that the right to purchase bait in Canadian harbors, and also the right to enter such harbors for any other purposes than shelter, repairs, and to obtain wood and water, had been expressly denied in the treaty of 1818, nevertheless, subsequent legislation on the part of both Canada and the United States had so far modified that clause of the treaty that a liberal interpretation of the phrase in question would give full freedom to New England fishing vessels to purchase all needful supplies in Canadian ports, and in general, to perform, without let or hindrance, all acts necessary for refitting. It was contended that in 1818, when the treaty was made, commercial vessels of the United States were absolutely prohibited from British American ports, and the privileges granted to fishing vessels in that year were exceptions to the rigid navigation laws of Great Britain. Since then, and notably by an act in 1830, and by the Imperial Shipping and Navigation Act of 1849, these restrictions upon American commercial vessels were removed. With the removal therefore of all former disabilities upon trading vessels, were not the few remaining disabilities upon fishing vessels (imposed by the treaty of 1818) also removed? Great Britain replied that these disabilities had not been removed, as she had then drawn, and did now draw, a distinction between *fishing* and *trading* vessels. The former, she contended, had no commercial privileges whatever; and

only with the understanding that they would not transport merchandise, they were accorded, by most civilized nations, certain special immunities from harbor and port regulations. They carry no clearance papers or manifests, and are free to come and go at will. Trading vessels, on the other hand; are strictly held to these formalities. For the protection of revenue laws and to prevent illicit trade, all commercial vessels are obliged to carry ships papers that indicate clearly their ports of departure and destination, and an inventory of cargo as well. These laws are very stringent, and therefore if American fishing vessels desire to become merchant vessels also, they must comply with the usual regulations imposed upon merchant vessels.

For obvious reasons the captains of fishing schooners were unwilling to be burdened with ships' papers. The nature of their calling made their movements more or less uncertain, and to be obliged by their clearances to call at Halifax when St. John's happened to be the more convenient port, would be an intolerable nuisance. The *Druid* of Gloucester, in 1886, furnished an example. With supplies for the American mackerel fleet she took out clearance papers for Harbor de Bar in the Magdalen Islands; but finding later that the fleet she sought was off Prince Edward Island, she proceeded to that point, and disposing of her cargo of provisions, put into the nearest port, — which happened to be Malpeque, — to obtain a return cargo of fish. There she passed an unhappy week in the toils of the revenue officials of that port.

As already mentioned (page 487), Congress had passed an act in 1793 authorizing fishing vessels to take out licenses to "touch and trade" at any foreign port, and to make purchases necessary for their own use without being subjected to the customs regulations of the United States. The form of this permit was not the same as a clearance, but was a document to be shown to customs officers of home ports, in order to exempt the holder from certain customs dues. The argument that the "touch and trade" licenses were understood as "conferring upon the vessel a right to land and receive on board a cargo of merchandise in the same

manner as if she were not engaged in the fisheries" was scarcely sound.

On the trial of the *David J. Adams*, charged with purchasing bait and ice in contravention of the terms of the treaty of 1818, the admiralty court in Halifax found some difficulty, because the Imperial Act of 1819, enforcing the provisions of the treaty of 1818, prescribed no penalty for such purchases, the only penalties mentioned being for "fishing and preparing to take fish" within the prohibited waters. To hold that buying bait was necessarily for the purpose of "preparing to fish" within prohibited waters was scarcely logical.

The real grievance of American fishermen, however, was in the aggravating and needlessly severe port regulations of the Dominion, and also in the harsh manner of their execution. One of these statutes was so framed that the captor was entitled to one-half the profits of confiscation, and the burden of proof to show innocence practically fell upon the defendant captains. The practice of purchasing bait and landing to transship cargoes, and the doing of numerous other acts necessarily connected with the refitting of a ship, such as purchasing new water casks, material for mending nets or sails, were declared illegal. For these reasons, and often upon very slight pretexts, American vessels were detained to the great discomfiture and annoyance of the fishermen. It was rather, then, to the strained and unfriendly spirit manifested in the interpretation of their laws than to the laws themselves that the Americans directed their complaints.

The Canadians, on the other hand, charged that the Americans sought, contrary to law, to use their ports as a base for fishing operations, and thus to exercise and enjoy in common, privileges which they well knew had not been conceded to them. Having exhausted their own fisheries by overexploitation, replied the Canadians, the Americans had demanded all the privileges of British subjects in Canadian waters, and furthermore they actually assumed and used them in defiance of treaty prohibitions, and in perfect contempt of all local

regulations. The seizures of their vessels were comparatively few and far between, considering the persistency with which the Americans violated their laws. For all privileges granted them, the Americans were unwilling to make any return. The Canadians reiterated their willingness to remove at any time the regulations so obnoxious to the American fishermen, and to grant them the fullest liberties in their ports, if the United States would but compensate them for such concessions. Their price, they said, was free Canadian fish into the United States, but this the Americans who sought favors of them opposed with all their influence in Congress.

A treaty with England was signed in Washington, February 15, 1888, providing for a commission to designate and describe the British waters in which the United States should enjoy full right to fish, and in like manner to enumerate and state specifically the harbors and other waters in which such rights would thenceforth be denied. One article recited that whenever the United States Government should remove the tariff duty upon the products of the Canadian fishery, then the privilege of entering all ports, harbors, etc., of the Dominion coasts would be accorded Americans for the following purposes, namely:—

“1. The purchase of provisions, bait, ice, seines, lines, and all other supplies and outfits.

“2. Transshipment of catch, for transport by any means of conveyance.

“3. Shipping of crews.”

The draft of treaty went to the Senate strongly recommended by President Cleveland, but failed to become law. Pending action by Congress, the following *Modus Vivendi* was agreed upon in February, 1888, which by tacit consent has continued to remain in force by renewal each year to the present time:—

1. For a period not exceeding two years from the present date, the privilege of entering the bays and harbors of the Atlantic coasts of Canada and Newfoundland shall be granted to the United States fishing vessels by annual licenses at a fee of \$1.50 per ton — for the following purposes:—

The purchase of bait, ice, seines, lines, and all other supplies and outfits.

Transshipment of catch and shipping of crews.

2. If, during the continuance of this arrangement, the United States should remove the duties on fish, fish oil, whale and seal oil (and their coverings, packages, etc.), the said licenses shall be issued free of charge.

3. United States fishing vessels entering the bays and harbors of the Atlantic coasts of Canada or of Newfoundland for any of the four purposes mentioned in Article 1 of the convention of October 20, 1818, and not remaining therein more than twenty-four hours, shall not be required to enter or clear at the custom house, providing they do not communicate with the shore.

4. Forfeiture to be exacted only for the offences of fishing or preparing to fish in territorial waters.

5. This arrangement to take effect as soon as the necessary measures can be completed by the Colonial authorities.

For the past twelve years, therefore, the regulations governing the Canadian fisheries are those of the convention of 1818, as modified by the words of the *Modus Vivendi* of 1888. The arrangement did not prove altogether satisfactory at first to either party, and the continued successful operation of the plan depended largely upon the good-will and forbearance of both.

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Changing conditions in the methods of fishing have operated more largely in the last ten years to do away with the troublesome "fishery question" than have a century of diplomatic skirmishes. At the present moment those chronic differences of the fishermen seem to be almost forgotten, and until new and unforeseen complications arise, the whole matter will probably remain at rest. The liability to further rupture with Canada concerning these rights lies to-day rather in associated diplomatic questions still unsettled between the two powers and in the adjustment of which the fishery regulations are likely to be utilized in the shifting game of international politics. The fishermen at least are satisfied with present conditions. Each year since 1888, and including the last, the *Modus Vivendi* has been renewed ;

and under its provisions American captains desiring the use of Canadian ports for purposes of procuring bait, transshipping cargoes, purchasing provisions, refitting, etc., may purchase licenses at the cost of \$1.50, multiplied by the registered tonnage of the vessel.¹

But each year the value of such privileges to our fishermen has been diminishing, and the vast majority of United States fishing vessels do not care to avail themselves of them. In 1898, out of 1427 New England schooners engaged in fishing, only 79 took out licenses, and the year before only 40 bought the right to enter Canadian ports for the purposes mentioned in the *Modus Vivendi*.

The inshore cod fishery of Canada, though still prosecuted by Canadians, has been wholly abandoned by Americans. The entire American fleet, which is equipped for cod and other "ground" fish, follows the Bank fishery. The use of larger, faster and better equipped vessels, the carrying of ice to pack away the catch, the use of iced or salted bait, has almost totally obviated the necessity of touching at Canadian ports, and our fishermen declare themselves to be

¹ The form of license is as follows:—

(Name) _____ (Master or Owner) _____ of the United States Fishing vessel _____ tons register, of _____, having paid to the undersigned, Collector of Customs at the port of _____ the sum of \$ _____, being one dollar and fifty cents per registered ton, the privilege is hereby granted to said fishing vessel to enter the bays and harbours of the Atlantic coasts of Canada, for the purchase of bait, ice, seines, lines and all other supplies and outfits, and the transshipment of catch, and shipping of crews.

This license shall continue in force for the year _____, and is issued in pursuance of the Act of the Parliament of Canada of 1892, entitled, "An Act respecting Fishing Vessels of the United States," 55-56 Victoria, chapter 3.

This license, while conferring the above-mentioned privileges, does not dispense with a due observance by the holder, or any other person, of the laws of Canada, and will become null and void, and forfeited forthwith, and the vessel will become ineligible to obtain a license in future, if any goods or supplies, or other advantages obtained hereunder are sold or transferred to any United States fishing vessel that has not obtained a license.

Dated this _____ day of _____ A.D. 189

Collector of Customs at the Port of _____

For Minister of Marine and Fisheries.

entirely independent of the rights or privileges which the Canadians have to offer.

By freezing their fares they are enabled to bring them home and to cure their fish upon American soil, thus doing away with one of the most aggravating causes of dispute in former years. Those American fishermen who resort more particularly to the Banks adjacent to Newfoundland admit the convenience of a license for using Canadian ports, especially in the contingency of prolonged unfavorable weather; but whatever may be the value of such privileges — even if made general and open to all — the fishermen are unanimous in the belief that they are not worth the price of free American markets to Canadian fish and fish products. Rather than suffer the great injury to their business, which they say free competition with the Canadians would cause, they would cheerfully forego the benefits given them by the *Modus Vivendi*.

As heretofore shown, the chief difficulties arising out of the fisheries in the last few years have been produced by the use of the purse seine. This method of fishing for mackerel was extensively followed by American skippers in the shallow waters of the Gulf of St. Lawrence, but the employment of these large nets was denounced by the Canadians upon the supposition that it tended to scatter the schools of fish, to interfere with their habits of breeding, and to cause them ultimately to abandon those waters. They alleged, therefore, that the use of this seine constituted an act *contra bonos mores*. Whether the Canadians were justified in those apprehensions or not, the Americans nevertheless continued the practice, basing their right to do so (beyond three miles from shore) upon the broad rights of *mare liberum*.

These points of difference offered an excellent foundation for future diplomatic disturbances, but two causes happily appeared which no doubt prevented the maturing of these seasonal quarrels into a more serious international disagreement. The American fishermen began of their own volition to abandon the use of the purse seine, and to return to the

more primitive, but after all the more effective, method of "chumming"; secondly, the mackerel began to disappear from Canadian waters, in consequence of which, each succeeding year has found fewer American vessels in the Gulf of St. Lawrence. Since 1886, indeed, the mackerel have almost wholly abandoned their former haunts in the Gulf of St. Lawrence, although reports of the present year give evidences that they are renewing their annual migrations to the more northern station. However, the abandonment of the purse seine has removed the prime causes of discord, and if the American mackerel fleet should resume operations in the Gulf, there is no special likelihood of conflict.

The northeast coast fisheries are in a most prosperous and flourishing condition, as may be realized from the fact that in 1899 the number of "ground fish" from the Banks (cod, haddock, hake, etc., excluding mackerel) landed at Boston and Gloucester, amounted to 155,367,808 pounds, valued at \$3,525,268. A substantial increase is thus shown over the business of the previous year, which amounted to 128,088,295 pounds, with estimated value of \$2,585,010. Reports for 1900 indicate that the fisheries are steadily increasing in value.¹

It is greatly to be hoped that the present regulations may continue in operation undisturbed by the intrusion of other diplomatic issues. Therein lies the chief danger of a perpetuation of this stubborn quarrel of a century between the United States and Canada.

At last the American fisherman seems to be satisfied, and the Canadian fisherman is equally without cause of complaint. Time has reconciled disputes which the wisdom of statesmen failed to adjust, and it has successfully composed those questions which diplomacy could not permanently solve. And thus the lesson is once more taught that war postponed is the beginning of peace. Let it be hoped that the cordial relations between the two great nations in interest thus cemented by time, may continue as long as time itself may last.

¹ See page 456.



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