A COMMON HERITAGE.

ADDRESS BY THE HONOURABLE JOHN W. DAVIS, PRESIDENT OF THE AMERICAN BAR ASSOCIATION, AT THE SEVENTH ANNUAL MEETING OF THE CANADIAN BAR ASSOCIATION.

Gentlemen of the Canadian Bar Association: I am here to-day in the discharge of a double duty. In the first place I have come to make delivery to you of the person of your distinguished guest, the Right Honourable Lord Shaw of Dunfermline. Three short weeks ago His Lordship landed in the City of New York, a Scotchman by birth and upbringing, an Englishman by residence, and with a strong bit of Dublin brogue accumulated in the preceding weeks still lingering on his tongue. Perhaps you may find him changed, for many things have happened to him since the day of his arrival. We have baked him on the prairies, balanced him on the Rockies, plunged him into the Grand Canyon and dipped him in the Pacific Ocean, and, as a post-graduate course, have called upon him to endure a lengthy session of the American Bar Association. Our national beverage he finds singularly lacking in Caledonian flavour; but disembarking in the very midst of a general coal and railroad strike the atmosphere was immediately familiar. From all this he has emerged such as you see him, and I now ask for a certificate that he is delivered in good order and condition, reasonable wear and tear alone excepted. We in the States part from him with sincere regret, and only a strong sense of duty to a friendly neighbour could have induced us to consent that he should cross the border. We count on you to join us in insisting that he shall not make this visit to either country his last.

My other function, which is clouded by no shadow or surrender or regret, is to transmit to you on behalf of the American Bar Association the fraternal greet-

ings of your brethren across the line. Our Association adjourned at San Francisco last week, after a useful discussion of many of the problems which beset the profession and the State. To you who have begun a meeting that will, no doubt, be equally fruitful, it sends a message of friendship and good will as cordial and sincere as heart can frame or language can convey. The lawyers of the United States recognize in their Canadian confrères not only the joint heirs of a common legal heritage but in a very vital sense their coworkers in a common cause. They salute you in the name of all the centuries of expanding freedom that lie behind us and all the hoped-for span of ordered liberty that lies ahead.

This thought of a common heritage and common duties springs to the mind in whatever part of the Western Hemisphere one may find himself. But nowhere surely is it more inevitable than here at this gateway of the Pacific, in the very heart of the region that once bore the name of the fabled Oregon. Here out of all the world is the only spot where the flags of Great Britain and the United States have ever floated side by side in concurrent sovereignty. Here is a country which for a third of a century lay free and open by mutual consent to the occupancy of the citizens of both powers. Spaniard and Frenchman and Russian all came hither to spy out and to covet the land, but it remained for men of British and American allegiance to parcel out the inheritance.

As one makes his way from Seattle to Vancouver he cannot but wonder as he passes San Juan Island whether there is any stone there to commemorate the tragic death in 1859 of the Hudson Bay Company's pig, whose murder produced an international incident. Do any of the traces of the joint military occupation that followed still remain? And where are the dreaded American guns which after the German Emperor's award of the island to the United States were to be erected, as the Jeremiahs of the day said, to threaten the city of Victoria? Do they still frown

over moat and bastion, or have they passed with the battle-ships and cruisers of the Lakes into the limbo of long forgotten fears?

Aside from the intellectual labours of his profession, what more engrossing study for a Canadian or American lawyer than those chapters of history which we share together; not only those written centuries ago in sunny France or in "Britain's fast anchored isle," but those which have had the broad sheet of our western continent for parchment? Side by side our fathers marched from the Atlantic to the Pacific, facing like dangers, suffering like hardships and winning like rewards. Neither frowning mountain nor trackless plain could turn or stay them, and whether at Vancouver or San Francisco we can but do homage to their dauntless spirit. And calling to mind that long roster of valiant souls who did battle on the fields of France during the fateful days of the Great War, cannot the men of this generation, Canadians and Americans alike, turn to the shades of their mighty pioneer dead and, pointing to their sons, cry out—"We, we the men who followed you, we, too, have not been unworthy!"

But if it be true, as I think it is, that no two nations of the world have more, perhaps none so much, of common inheritance from the past, it is equally certain that none are beset by problems more alike which must be faced and solved in the immediate future. We shall be wise if, in struggling to their solution, we profit each by the experience of the other; and wiser still if, when circumstances permit it, we follow similar policies to a common end. It would be a definite loss to constrict the two nations in any straight-jacket of artificial uniformity; but it would be sheer blindness to forget those things in which their lives and destinies are inextricably joined.

One of the virtues, it has always seemed to me, of the Federal system lies precisely in this, that each State with us, as each Province with you, is an experimental laboratory, by whose mistakes, no less than by

its successes, its sister States or Provinces can learn. If, as has happened not infrequently, one of the States embarks upon financial expedients of doubtful value, actual trial will soon expose the fallacy of the plan and prevent its imitation. If another wishes to adventure upon the uncharted sea of State Socialism, its failure enures to the enlightenment of its fellows if not to the advantage of its own citizens. Social legislation, so-called, such as that relating to the hours of labour, the employment of children, or compensation for industrial accidents, spreads by economic pressure or by conscious imitation from State to State; and the existing aridity now established by the solemn and irrevocable process of constitutional amendment could never have prevailed if the drouth had not first made its attack upon a State-wide area. This process of experiment, observation, avoidance or imitation is continuous in the United States; and I see no reason whatever to think that it stops at the St. Lawrence, the Great Lakes or the 49th parallel. Indeed the evidence is all to the contrary.

Foremost among the joint and mutual problems of which I am thinking I put the great question of population. We are 100,000,000 below the line, you are 9,000,000 above it; but neither of us have more than begun to fill the vast domain given us by destiny. A distinguished geographer (Professor Taylor, of the University of Sydney), declares that reasons geographical, economic and political make it certain that North America is to contain the predominant fraction of the white race; and that in the course of one, or at most two, centuries, six or seven hundred millions of people will inhabit the continental area north of the Rio Grande. Who are these men who are to come in such countless numbers to crowd our cities, to populate our farms and to fill our mountains and our plains with their habitations?

To the East lies Europe, stricken by war, reduced in possessions and in resources, with clamoring thousands and tens of thousands eager to exchange their

present unhappiness for the comparative comfort of the New World. To the West is Asia, ready, were we but willing, to relieve the congestion of its teeming multitudes by sending them across the Pacific. Those who come from either direction will inevitably filter back and forth across the imaginary line that divides us, and we shall either absorb them into our body-politic or be absorbed by them in turn. What barriers, if any, shall we build against these rising tides; and how long when they are built will they withstand the tremendous pressure behind them? These are to-day, and they bid fair to be for many years to come, questions vital to the existence of the social order we enjoy.

There is a clear consensus of opinion that to open wide our doors to Asiatic immigration would be a kindness neither to the Asiatic nor to ourselves; that between them and us there are differences, not only of race but of habit and custom too profound to make their entrance in great numbers a source of happiness to them or benefit to ourselves. And with the realization of this fact upon both shores of the Pacific the pressure from the West has largely disappeared.

Until yesterday the doors of the United States stood wide open to all the European world. Immigrants or descendants of immigrants are we all, and we owe much to those whose hardihood and courage nerved them to leave the familiar surroundings of their birth to risk their fortunes in an unknown land. There is something altogether fine in the spirit that can raise men to such adventures. But of late more than one disturbing symptom has made us wonder how much farther it was safe to go on the path of unrestricted immigration. The fierce controversies engendered by the war made clear the existence of groups among us whose sense of racial unity was not yet submerged in their new allegiance. Our greater cities have each come to have its racial district where the new-comers are collected beyond the reach of ready assimilation. And many, especially among those who

were last to come, brought with them little love or understanding for the practice of liberty under law as we conceive it. With no desire to exclude those who may wish to become American in thought and feeling as well as in name, we have resolved—finally resolved—to preserve the institutions we have inherited and to give no shelter to those who cannot or will not help us in that task. This is the thought which lies behind our present law restricting immigration, and which will animate, I trust, any statutes that may follow it.

Hardly less vital to the national life is the problem of communication, important in an economic sense to the welfare of any people great or small, but to those who occupy wide continental areas of the highest political consequences as well. The ties which bind Maine and California together in a federated union are forged primarily of steel. Perhaps no less can be said of Nova Scotia and British Columbia. It needs no prophet to foretell that with the steady growth of population the demand for adequate means of transportation will become more and more insistent and its supply more and more a *sine qua non* of national existence. More and more also the lines of communication will ignore political boundaries and will spread their net of steel in one continuous mesh from Hudson's Bay to the Gulf.

The question is, who shall provide for this necessity—private enterprise or governmental action? If the former, must it be under such rigid regulation as to destroy all the advantages of personal initiative; or if the latter, what substitutes can we invent for the stimulus of personal profit or the restraint of personal loss? Is this a field in which there is an exception to the general doctrine that men work best when working for themselves? I think it is fair to say that after experience during the war with governmental control, though not with government ownership, of railways, the people of the United States returned with a sigh of relief to private operation,

feeling that King Log with all his failings was a kinder master, certainly a better servant, than King Stork. In whatever is or may be done North or South on this subject, we will both do well to watch with eager anxiety the result of our respective experiments.

To another series of uniform problems the working of our federal systems irretrievably commits us. These are those which come from the constant play and counterplay of the centrifugal and centripetal forces. It has been the proud boast of the Anglo-Saxon, or, to use the popular phrase of the moment, the Anglo-Celt, that he has founded his liberties on the principle of local self-government. Notwithstanding the far-flung spaces over which he has been called to rule, he has never forgotten the maxim that "Liberty can only be preserved in small areas." He has had, however, the political genius to reconcile this dogma with the erection of a central government strong enough to make a nation and efficiently equipped for all national functions. Historical causes rather than deliberate choice have made with you the Dominion, with us the States, the seat of primary power. But the pendulum swings to and fro between Washington and the State capitals and between Ottawa and the Provinces as the weights of local and national sentiment rise and fall.

For some time past in the States the centripetal force has been the stronger. One task after another has been laid on the Federal Government, one set of petitioners after another has turned to Washington for redress, one demand after another has been laid at the door of Congress, until men are beginning to ask whether the central machinery is adequate to the strain. The real problem which I fancy confronts us both is to keep alive in every governmental subdivision the wholesale doctrine of self-help, being assured that, while a vigorous national government is essential to national health, an honest local administration of local

laws is the only safeguard of freedom under democratic forms.

Putting to one side the controversial questions—matters of trade and commerce, as to which I do not hesitate to confess my own conviction that the more free and unrestrained trade can be made between the two countries the better it will be for both of them—we come to a series of questions in no way peculiar to ourselves. What after all are the functions of government? How far are the welfare and happiness of a people in the grasp of their rulers? What are the true relations between the individual and that impersonal being men call the State? Wild theories are afloat in the world to-day, and some of those which make the loudest boast of novelty are nothing but mad doctrines rejected by experience centuries ago. Only the weakness of human memory gives them a moment's countenance.

There is nothing new, for instance, in the Bolshevist doctrine that private ownership is a crime and that title to all property must rest in the state alone. That dreary heresy has made its fleeting appearance in almost every age since man first began to keep a record of his actions. A former enthusiast for the system, who lately returned from Russia to the United States, is reported to have said, after having made trial of both, that he prefers a land where there is an unequal division of plenty to one where there is a perfectly equal division of nothing.

What is novel in the belief that prosperity can be advanced by doles or bonuses or subsidies distributed in the public name? Bread and circuses kept many a politician afloat at Rome; but their cost returned to plague the honest citizen, and the State rotted away under a false pretence of plenty. And who shall have the credit for inventing the government of the community by and for a class if not the first sturdy buccaneer who gathered his followers about him and set out to prey upon his fellows?

Adam Smith, a man once reputed wise and to whose wisdom the world will turn and turn again with profit, wrote that—

> "little else is required to carry a State to the highest degree of affluence from the lowest barbarism but peace, easy taxes and a tolerable administration of justice; all the rest being brought about by the natural course of things."

This sentiment is worth pondering in a day when the whole world is trying to lift itself by pulling on its legislative boot-straps. Easy taxes are, perhaps, beyond the reach of this generation; but peace is ours, at least on this side of the Atlantic, and a tolerable administration of justice is the boast of our common stock.

To-day, as always under democratic forms of Government, "the house of the lawyer is the oracle of the whole State." There is encouragement in the thought that the lawyers of Canada and the United States share their burdens, and face their common problems united in sentiment and firm in purpose. Long may they continue to give their united strength to the cause of liberty under law, with a solemn sense of their joint and indivisible responsibility.