ADDRESS TO THE NEW YORK BAR ASSOCIATION.

BY HONOURABLE NEWTON W. ROWELL, K.C.

Mr. President, and members of the Bar Association of the State of New York:—

May my first words be of very warm appreciation for the manner in which you have received this toast, and particularly for the manner in which your Chairman has proposed it. The language in which he has spoken of Canada and of the part we took in the war will be deeply appreciated by every Canadian citizen.

The President asked you to drink to the toast of the King of England. That was good. He is also King of Canada. There was a time—and this is suggested by the President’s remark—when the British Empire did consist of one central government with a number of dependent colonies in different parts of the world. With that flexibility and adaptability, however, which are characteristic of the British Constitution, during the past fifty years these colonies have developed into free, self-governing states, equal in status with the mother country, and all owing willing allegiance to a common Sovereign. We hail King George as our King in the same real sense that the people of England hail him as their King.

With the progress of time, with the increase in knowledge, and with a better understanding of the principles of free, democratic government, we are now able to do what was not possible a century and a half ago when you had your little difference with the mother country; we are able to give full expression to our national aspirations and still remain within the British Empire. You decided to work out your national destiny outside the British Empire. We are now able to work out our national destiny, with all the
liberty and freedom you enjoy, within the British Empire. We are citizens of Canada. We are full citizens of Canada, but we are more than citizens of Canada, we are citizens of the British Empire, and we are at home and under our own flag when travelling over a quarter of the surface of the globe. We prize our Canadian citizenship, but we prize our British citizenship just as thoroughly as the Apostle Paul prized his Roman citizenship.

Now, the Chairman has referred to the many ties that bind our two countries together, the many ties that bind the Bar of the two countries together. Recently we have had some new ties that bind us together, in addition to the ones you are thinking of. We have always welcomed you to Canada. If my recollection serves me aright, my distinguished friend, the Hon. Mr. Taft, the present Chief Justice of your Supreme Court, was engaged on a Canadian railway valuation case in the City of Montreal when he received notice of his appointment as Chief Justice of the Supreme Court. My distinguished friend, Mr. Pierce Butler, of St. Paul, was associated with me as counsel in a railway valuation case in the City of Toronto, when he received notice of his appointment as an Associate Justice. When Mr. Butler told me of his appointment, I said, "Butler, there will be no chance for the members of the Canadian Bar, in Canadian railway valuation cases, once it is established that the road to the Supreme Court of the United States for American barristers is by way of Canada! In view of what has happened we fear we shall lose our practice and American counsel will be in charge of our railway cases."

But there is one tie of which I desire to speak particularly to-night, a tie suggested in the remarks of your Chairman in his most interesting and able presidential address of yesterday. One of the most striking characteristics of both British and American political institutions is the 'rule of law,' or the supremacy
of law. By that 'rule of law' we mean that no man can suffer in his person or in his property, unless he violates the law, and he is adjudged to have violated it by proper legal procedure in the ordinary courts of the land, and that every citizen, be he rich or poor, be he strong or weak, must be adjudged by the same courts and by the same law. Under this 'rule of law' we have developed our ideals of personal liberty, liberty of person, liberty of the press, liberty of assembly, and liberty of speech. We all recognize—all men of the Anglo-Saxon tradition—that the 'rule of law' is the best safeguard of personal liberty and the surest guarantee for the orderly and progressive development of our civilization. Because this 'rule of law' is still such a characteristic and vital feature of your political institutions and ours, a special obligation rests upon men learned in the law, and who know and appreciate its value, to endeavour to see that the laws which govern us are just, that those laws are honestly and impartially administered, so that the people may have faith in the courts and in the laws of the land.

May I give you an illustration of what we mean by the 'rule of law' as opposed to the use of arbitrary power. Shortly before 1771, Minorca became a British possession, and Lieutenant-General Mostyn was made Governor. There was a troublesome fellow there by the name of Fabregas, who took part in a riot and tried to stir up a mutiny, and the doughty General deported him to Spain without a trial. He proceeded to London and sued the General in the British courts, and, 150 years ago, when a pound sterling meant a great deal, he recovered a verdict of £3,000 for wrongful imprisonment and deportation. The General appealed, and the appeal came before the King's Bench and Lord Mansfield delivered judgment as follows:—

"To lay down in an English Court of Justice such a monstrous proposition as that a Governor,
acting by virtue of letters patent under the Great Seal, can do what he pleases; that he is accountable only to God and his own conscience, and that he is absolutely despotic and that he can spoil, plunder, affect their bodies and their liberty, and is accountable to nobody—is a doctrine not to be maintained; for if he is not accountable to this Court, he is accountable nowhere."

May I add, Mr. President, it is that 'rule of law' honestly and impartially applied throughout the whole British Empire, which has made possible the peace and order and good government among more than 400,000,000 of people, a quarter of the whole human family.

Mr. President, that 'rule of law' did not spring spontaneously into being; it has been a gradual and steady growth. There was a time in the old mother country of most of us, when the blood feud, private vengeance, and trial by battle prevailed. But in the development of organized society, private vengeance and these other primitive methods of redressing wrongs had to give way; and why? Because they disturbed the peace of organized society. They prejudiced the interest of those who were in no way interested in the controversy. By the establishment of Courts of Justice and the 'rule of law,' peace and order were established in the community. What is true of our country is true of yours.

A somewhat similar process has been going on, in the international field, during the past three hundred years. It is not quite three hundred years since Grotius wrote his famous book which laid the foundation of international law. In almost the same way as the common law grew up, there has been growing up a body of international law governing the relation of nation to nation, and jurists and courts have been defining and declaring the principles and the rules which should govern international relations, in peace and in war.

But the 'rule of law' in international affairs cannot be worked out and made effective without a Per-
manent Court of International Justice to administer that law. I wish, Mr. President, to pay a tribute, a most sincere tribute, to the leadership of the New York State Bar Association in promoting the establishment of a permanent Court of International Justice. You led the way in the resolution of your Association away back in the '90's, then it was while a distinguished member of your Bar, Mr. Root, was Secretary of State of the United States, and while another distinguished member of your Bar, Mr. Choate, was the chief American delegate to the second Peace Conference at the Hague in 1907, that your government brought forward the proposal to establish a Permanent Court of International Justice for the determination of juridical disputes between nations. The proposal did not become effective at that time. The Conference could not agree on the method of selecting the Judges, as Mr. Wheeler pointed out yesterday, in his report on International Arbitration. But you did not grow discouraged, nor did the American Nation. You followed it up, you pressed it upon the attention of President Wilson, and the Peace Conference in Paris, and when, in 1921, it became necessary to frame a constitution for that Court, which it was proposed to establish under the Covenant of the League of Nations, Mr. Root again gave the world the benefit of his great legal knowledge and ability in framing the constitution of the Court. In electing the judges, the League of Nations chose another distinguished member of the American Bar, Mr. John Bassett Moore, as a member of the Court. The world to-day is indebted to your Bar and your country for the leadership you have given in this movement for the establishment of a Permanent Court of International Justice. Without your leadership it could not have been established. During the last two or three years you have voluntarily withdrawn from the position of leadership in the movement. Other men and other nations who were glad to follow your lead have held the flag steady at
the position to which you advanced it. We have dug in and maintained the position. We are holding it to-day. The Court is organized and working. But may I say to you; all will welcome the day when you will resume your rightful place of leadership in this great movement, and make that Court what its founders designed it to be, a court for the benefit of the whole world.

My friend, Senator Pepper, pointed out last night, and rightly so, that the grave questions which are now agitating Europe were questions of a juridical character, questions involving the interpretation of a treaty or the ascertainment of facts, and were within the scope of the work of the League of Nations and the Permanent Court of International Justice. He also pointed out that, so far, neither the League of Nations nor the Permanent Court of International Justice has taken these questions into consideration. May I suggest to you a reason? It required the united efforts of all men of all nations who believed in the 'rule of law' to establish that Permanent Court of International Justice. It was the united public opinion of all such men and nations that made it possible. Since then, public opinion has been divided. That Court cannot gain the prestige nor obtain the position in the world necessary to enable it to settle these grave issues unless the public opinion that instituted it is again united back of it and supporting it.

In the development of this 'rule of law' among the nations, we must all realize it is not sufficient to have only a tribunal capable of deciding juridical disputes, because many of the disputes arising between nations are not of a juridical character or appropriate for determination by a judicial tribunal. How are we to deal with these? Shall we continue to permit the barbarous methods of settlement which were abandoned a thousand years ago in settling domestic disputes to prevail in an international sphere? Nearly a thousand years ago the authority in the community
said to its own members—you cannot continue to settle your disputes in this way because you interfere with the rights of the whole community; you disturb the peace and affect the rights of innocent people. So by degrees courts of law were developed, with compulsory jurisdiction, and the 'rule of law' was established.

To-day this whole world is one great community. We may regret it, we may deny it, but our denial does not change the fact. We may deny the law of gravitation—but the apple still falls. We may deny that the earth moves—but it will move nevertheless. We may deny that we are one community—but we are. We may claim we can disassociate ourselves from other people, but we cannot. The economic and other laws and forces binding us together continue to operate irresistibly, regardless of our doubts or denials. I therefore submit this proposition to the members of this Bar: Has not the time come in the history of the world when the community, the family of nations as a whole, has a right to say to any two or more nations having a dispute which they are unable to adjust by ordinary diplomatic means, that they must choose some method of settlement which does not inevitably cause loss and suffering to innocent nations and serious prejudice to the whole of humanity.

I do not hesitate to say that I believe the time has come, and it is a denial of the validity of our Christian civilization and of the faith of those who believe in the 'rule of law' and peaceable settlement of international disputes, to say we cannot marshal the public opinion of the world so as to secure the adjustment of the differences between nations, on the principles of justice rather than of force, just as we require the settlement of disputes between individuals on the principles of justice and the orderly processes of law rather than by force.

And here again I wish to pay tribute to the American nation, and the invaluable contribution you have made to the solution of this problem also. I believe
that the machinery has been provided for the settlement of this very class of disputes, and it could not have been provided without your leadership and support. You may not agree with me; I do not ask you to, I am only giving you my view. I believe the League of Nations provides for the processes of conciliation necessary for the settlement of such disputes, and requires the disputants not to resort to war until all other methods of settlement have failed. I repeat, we are indebted to the American people and the American Government for the leadership in this movement, and but for your leadership and support we would not have a League of Nations to-day.

Why do I say this, Mr. President? You referred, in the course of your introduction, to the part Canada played in the war. I happened to be a member of the Government of Canada during an important portion of the war period. I was a member of the Government of Canada at the time the peace was signed and the treaty was made at Versailles. I well remember the day we received the despatch indicating that Germany was suing for peace, indicating the terms on which she was prepared to lay down her arms, and our government, with others, was called upon to consider whether peace should be made on those terms or not. Great Britain did not undertake to speak for us. We considered the matter ourselves and expressed our own opinion. In the terms that were laid before us, and which we had to consider in deciding this grave issue, Germany offered to accept the proposals of your Government, as embodied in the speeches of your president in January of 1918, and subsequent addresses, particularly that of September 27th, 1918. In the address of September 27th, 1918, so particularly referred to, we find these provisions:

"And as I see it, the constitution of that League of Nations and the clear definition of its objects must be a part, is in a sense the most essential part, of the peace settlement itself. . . . The confidence with which I venture to speak for our people
in these matters does not spring from our traditions merely, and the well-known principles of international action which we have always professed and followed. In the same sentence in which I say that the United States will enter into no special arrangements or understandings with particular nations let me say also that the United States is prepared to assume its full share of responsibility for the maintenance of the common covenants and understandings upon which peace must henceforth rest."

With these facts before us, as members of the Government of Canada, we decided in favor of peace and cabled our approval. It was because your Government embodied in the very agreement on which the war came to an end, a stipulation that a League of Nations should be established, that we have the League of Nations functioning to-day. Mr. Pepper in his very able address said that the League of Nations so far had avoided one war. I agree with him, it has. I believe it has avoided at least three. Canada is a member of the League, and I had the honor of being a delegate to the First Assembly. We have followed its proceedings closely. Senator Pepper told nothing but the absolute truth when he said the League had avoided a war in the Balkans. When the Serbians invaded Albania, the Council of the League said: "Withdraw your troops, or the economic boycott will be put in force," and the Serbians withdrew. Compare the situation in the Balkans in 1921 with the situation in the Balkans in 1914: Then no conference, no means of getting the powers together to talk it over, and a conflagration that drenched the world in blood. In 1921, a conference—and the Balkan trouble settled. What does avoiding one war mean? One war cost us over 50,000 of our best and bravest, who tonight sleep in France and Flanders. If the League has stopped one war, would I not be untrue to the men who have fought and the men who have died, if I did not raise my voice in favor of the League which
has saved us the possibility of a similar calamity?

This great Nation, Mr. President, has led us, both in the establishment of a Permanent Court of Justice, and in the creation of the League of Nations. We have the machinery; it now depends upon the public opinion of the world whether it shall be operative and effective. You may say this is ideal, that it is too ideal; that it is not practical, and there are many pessimists who feel that way. Mr. President, the path of human progress has not been blazed by the cynics or the pessimists. The path of human progress has been blazed by men with vision to see, with faith to believe, with courage to execute. What was the spirit that animated the pioneers in your country and mine, the men who bridged the rivers, tunnelled the mountains, plowed the plains; who laid the foundations of the institutions, religious, educational and civil, which are the pride of your country and of mine. Were they the cynics and pessimists? No, they were the men who saw and believed and went forth with courage and achieved. And I come to you to-night with this message: You have been the leader in these great movements in the past, and we and others have been glad to follow. The world awaits with anxiety, but with the confident hope, the time when you will resume your place of leadership. For we are persuaded that this great nation which loves justice and peace, whose heart bleeds when humanity bleeds, will resume her place of leadership, and that all men who believe in law and order and love justice will march together until peace and justice are established firmly in the earth.

Editor's Note. Since the delivery of the above address President Harding has submitted to the Senate a recommendation that the United States become a party to the agreement for the establishment of the Permanent Court of International Justice, and this recommendation will come before the Senate for action at the next session of Congress, in December.