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AND THE

SOUTH AFRICAN REPUBLIC.

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THE HISTORY OF THE TERM.

Many terms used in International Law—that changing custom of States of European descent—suffer, like those of all systems of customary law, from want of precision and want of uniformity in usage. The great source of the formulation and of the reducing into shape of these customary rules is, of course, to be found in the writings of the Jurists of all European nationalities. Almost inevitably, therefore, a given term sometimes takes a slightly different connotation in the works of one authority from that attributed to it by another. It is not merely—though this, too, is unavoidable—the case of the custom during the lapse of time having actually changed, and the same word being used to denote a different relation. The whole truth is that as regards certain terms, even among contemporary writers, difference of national language, difference of standpoint—philosophical, historical or juristic—makes one jurist use a term in a slightly different sense from that in which it is used by another. General agreement on the main outlines and on most details of the system of International Law of course exists, or no coherent system could be found to serve as a guide for statesmen, diplomatists, generals or Courts of Law. But an occasional term is not always as precise as could be wished. This much by way of preface.

The term "Suzerainty," as used in the modern Law of Nations of European descent, suffers under a peculiar degree of vagueness, and this vagueness is the result of all the causes just referred to. Originally a mediaeval term characteristic of the Europe of feudalism in its perfect form, then applied in a slightly different sense to the shifting and dissolving relations of the later Holy Roman Empire, then seized upon as a term serviceable to gloss over the slow disruption of the anomalous Empire of the Sultan of Turkey—that intrusion of barbarism on the polity of Europe; last of all, suggested by the ironic fates to a British Colonial Secretary as descriptive of a relation established between the restored Republic of the Boers and the British Empire;—in every class of these cases enumerated, the word "Suzerainty" bears an absolutely different meaning from that it holds in the other classes.

On the tolerably well established incidents of the relation of Suzerain and Vassal in mediaeval Europe it is unnecessary to dwell. The Liber Feudorum can throw little light on the relationship so described among modern States. Wardship and marriage, relief and military service—rights of the Suzerain—are as far removed from the conditions of our time as are the renunciation of allegiance and the selection of another Lord—a privilege not unfrequently exercised by the Vassal. How thin the cord might become readers of Scott's "Quentin Durward" may remember—when they recall the picturesque scene in which the Vassal Duke of Burgundy sends his defiance to his Suzerain Louis XI, and the Hall of Plessis-les-Tours resounds with the clash of the vassal's glove, and the brief challenge of his herald—"Bourgogne!" In the history of old Spain, the Cid's frequent changes of allegiance form no small part of his chequered career. Even such a tyrant as Pedro the Cruel found that his treating such a transfer as rebellion cost him his throne and his life. In the Fuero Viejo provision is made .. "How a vassal may change his Lord" Fealty can be shifted at will from Aragon to Castile, from Navarre to Leon.

The use of the word in the later stages of the rapidly dissolving Holy Roman Empire more closely approximates to that of our own times. In the polity of mediaeval Europe every State, like every smaller community, had, theoretically at least, a superior always discoverable if not usually much in evidence. The tradition of the political unity of the race under a single authority, first embodied in the Roman Empire,

survived even the mighty changes in men's minds and actions resulting from the foundation of Christianity as the religion of Europe, the incorporation of the Teutonic, Celtic and Scandinavian tribes into the organised community of Europe and the shrinking of the heritage of the Cæsars by the loss of its non-European provinces. Europe was still conceived as a pyramid. The Emperor and the Pope were always in men's minds understood to be at the apex; even in England, as Maine points out, the Imperial supremacy was never formally disclaimed, and on occasion, such as those arising from the Crusades, was even acknowledged. Now, the modern Concert of Europe, dating from the Grand Compromise embodied in the peace of Westphalia of 1648—when State Independence in religion and in autonomy, in the affairs of this world and the next, was formally, however reluctantly, sanctioned by the Emperor—the modern Concert of Europe assumes no subordination *a priori* between States. All are theoretically equal in rights and all are independent. So far from its being assumed that every State has some external superior, there is now to be found a quite contrary assumption from that of older Europe. If any State be subordinate it must be by express compact. The individualism of the Renaissance and of the Reformation is extended to international politics; the dominant ideas of the peoples—of their sovereigns, soldiers, statesmen and Law Courts—being formulated in the writings of Grotius and the jurists who succeeded him.

The transition stage—between the settled subordination of feudal Europe and the anarchy tempered by war of our modern Concert—was of course accompanied by confused and confusing pretensions; based now on the system superseded, now on the newer polity whose basic ideas took time to sink in. The last great controversy in Christian Europe turning on the existence of a Suzerainty and the extent of the rights therein involved was instructive, as showing how conceptions had changed; and showing, too, the inherent danger of the method of pseudo-conservatism so dear to lawyers—that of concealing a change by using the antique term for a new relation.

In feudal times, the ideas of property in land and political authority were not clearly distinguished. If land were held as a fief depending on another territory higher in the scale of feudalism, the higher Lord was Suzerain, the second was Vassal. Although certain rights incident to the

relation—of military service, of succession and others—were defined, or at least were understood, with tolerable clearnesss; the exact extent of the right to political obedience, or whether there was any such right, was never a matter beyond dispute. What, in other words, was the relation between political sovereignty and Suzerainty?

The peace of Munster (Article 70) ceded to France the sovereignty hitherto possessed by the Holy Roman Empire over the three bishoprics of Metz, Toul and Verdun; each bishopric comprising the city and its district. Now, there existed several other fiefs outside the districts, attached to the bishoprics by the tie of Suzerainty. Were these fiefs, and the sovereignty over them, transferred to the Crown of France? The French lawyers held that they were; and the so called Chambers of Reunion established by Louis XIV in 1680 declared that the king obtained by the Treaty of Munster sovereignty over all these principalities and lordships. But the German Lawyers denied this; and contended that Suzerainty was really a relationship based on a title to property, and did not include sovereignty; and that there was no necessity that the vassals of the bishoprics should become subjects of the king.

This controversy need not surprise us; and, even if the ideas of mediaeval Europe on the relationship of Suzerainty had been precisely formulated, since the term really belonged to a bygone order of united Europe disputes as to the incidents of this, as well as of the most settled relations, were to be expected under the new order of Europe as individualist. Similarly, wherever, as in Germany, principalities and dukedoms were strong enough to hasten the growing disruption and to form themselves new centres for the consolidation of authority the right of the superior under the feudal system were, by one and the same potentate, denied as against the Emperor and asserted as against the vassal. The great consolidation of France—of the hereditary dominions of Capet—formed an exact parallel, though earlier in date, to that of the dominions of the princes of northern Germany.

Some waifs and strays of bygone time and of the later period of confusion have floated down the stream to our own days. The little Republic of Andorra in Spain, placed by a Treaty (closing a war of four hundred years) under the joint Suzerainty of the Bishop of Urgel in Spain and of the Count of Foix in France, has seen this joint Suzerainty transformed

by the lapse of time into a joint protectorate ; exercised on the Spanish side still by the Bishop of Urgel, but on the French side by the president of the French Republic, herein heir to the right of the Counts of Foix. The principality of Monaco, placed under the protectorate of France by a Treaty of 1641 and after many shiftings of authority between France and Italy again under the protectorate of France, has been by the cession of nearly all its tiny territory reduced to what has been happily called an international atom. The protectorate over the minute Republic of San Marino formerly exercised by the Holy See, is now appended to the Crown of Italy. The only Suzerainty at present exercised in Europe or capable of being described as existing—excluding the Turkish Empire, from which, as will be shown, no true parallel can be drawn—is that over the Lordship of Kniphausen. But this is a modern invention, created in 1825 for the benefit of the Duchy of Oldenburg in Germany ; and may probably now be regarded (without serious danger) as merged in the sovereignty of the German Emperor. Earlier in the present century, however, there were more survivals of the superseded status of Suzerainty. The Suzerainty of the Holy See over the kingdom of the Two Sicilies was supposed to linger into the nineteenth century, albeit attenuated into a pale ghost of the past.

THE SUZERAINTIES OF THE TURKISH EMPIRE.

The dearth of invention, which appears to have afflicted diplomatists at the end of the eighteenth century and induced them to press into their service the mediaeval term of Suzerainty as descriptive of the relation then being established between the partly emancipated Christian principalities of the Danube and the barbarian power which the dissensions of Christendom had permitted to intrude itself on European territory, has done its share towards darkening the confusion which already surrounded a term originally obscure, and therefore inappropriate to describe the newer relations of the newer Europe of State Independence. Fortunately, however, for the brevity of our enquiry, it will not be necessary to investigate these creations of the over-lordship of the Great Powers of Europe. It is not alone that the incidents of these Suzerainties were precisely defined in the instruments creating them ; it is not alone that they are now abolished as far as

the principalities of the Danube are concerned and that the only so-called Suzerainty exercisable by the Sultan over a Christian State is that set up in 1878 over Bulgaria : it is that the anomalous position of Turkey, and its falling outside of the community of Europe, render all illustrations drawn from its relations inappropriate to throw any light on the relations of States of European descent. Turkey is outside of the community of Europe, and can never be included in it : a fact brought into striking relief by the sequences, many of them tragic, of the futile declaration of the Treaty of Paris in 1856 pretending to admit that State of irreclaimable barbarism to the community of the public law of Europe.

These instances may be disregarded with the greater security in view of the fact that the conclusions to which we would be led as to the meaning of the term Suzerainty in modern European International Law, and as to its utility as a term descriptive of State relations, should we consider the Turkish Suzerainties, would be in no respect different from those at which we shall arrive by confining our attention to States of European descent.

Two observations alone seem worthy to be made. The relationship of Egypt to Turkey appears to have been referred to in the negotiations after the battle of Majuba Hill, which terminated ultimately in the Suzerainty Convention of Pretoria of 1881, establishing British Suzerainty over the Transvaal State. (Mr. Justice Jorissen's "Transvaalsche Herinneringen, p. 84"). It will be seen, however, when we come to consider this branch of the question, that the allusion, even if it could throw any light on the relationship then established—and it is quite certain that it could not—will be unnecessary in view of the plenitude of other evidence explaining and illustrating the relation. The other matter worth notice is that payment of tribute is apparently the sole incident of the so-called Suzerainty established by the Treaty of Berlin of 1878 over Bulgaria in favour of the Sultan of Turkey. This money payment cannot be held a peculiar characteristic of Suzerainty, as it does not appear in other instances of Suzerainty, and would not exist in this instance but for its express institution by the Treaty. A money payment, consisting of the surplus revenues of the island of Cyprus, is payable by the British Government to the Sultan, but no one would suggest that any Suzerainty is thereby involved.

SUBORDINATE STATES: A COMPARISON OF AUTHORITIES.

Actual independence of the States of Europe, and conscious repudiation of the authority of any external superior constituted the dominant features of the condition of Europe at the time when Grotius and the Jurists started on their enterprise of formulating rules for the voluntary acceptance of European sovereigns, soldiers and statesmen—as an alternative to anarchy in the relations between the States *de facto*, though not yet *de jure*, freed from the control of a hierarchical superior. It is unnecessary here to dwell on the various causes, intellectual and physical, which occasioned this inversion of the mediaeval conception of Christendom. "If" observes Hall, "a law had been framed upon the basis of the ideas prevalent during the middle Ages, the notion of the absolute independence of the State would have been excluded from it. The minds of men were at that time occupied with hierarchical ideas, and if a law had come into existence it must have involved either a solidification of the superiority of the Empire, or legislation at the hands of the Pope. Law imposed by a superior was the natural ideal of a religious epoch; and in spite of the fierce personal independence of the men of the middle Ages, the ideal might have been realised, if it had not been for the natural jealousy of the secular and the religious powers. With their definitive failure to establish a regulating authority, international relations tended to drift into chaos; and in the fifteenth century international life was fast resolving itself into a struggle for existence in its barest form. In such a condition of things, no law could be established which was unable to recognise absolute independence as a fact prior to itself, and rules of conduct which should command obedience apart from an external sanction were the necessary alternative to a condition of complete anarchy."

In 1625, when Grotius wrote "De Jure Belli et Pacis," this independence existed *de facto*. Twenty-three years later, by virtue of the Grand Compromise, this independence of the States of Europe was recognised as *de jure*. The work of Grotius, preparing men's minds, smoothened the way for that formal acceptance of separate State independence and of the individualistic Concert of Europe.

Notwithstanding the general acceptance of the newer theory of State independence, relics of past subordination of

all States still persisted in isolated instances. Grotius distinguishes between the Status of independence and that of protection; at the same time distinguishing protection from sovereignty by speaking of States which are "sub patrocinio, non sub ditione." He recognises that a State may place itself under the protection of another without losing its international existence. At the same time there are degrees of subjection; a treaty may be one of unequal alliance "cum imminutione imperii;" or it may be "sine imminutione imperii."

One hundred years later the idea of protection and the Status of protected States had become clearly defined. Bynkershoek, in his work "Quaestiones Juris Publici," published in 1737, referred to the position of States which are "sub Tuitione."

It is not, however, until the close of the last century that the condition of States whose position falls short of complete independence comes to be described by the terminology now familiar to us. The term "Semi-sovereign" was used to describe these States by Moser, whose work "Beytrage Zum Völkerrechte in Friedenzeiten" appeared in 1778. Moser was the pioneer of the modern method in International Law; the so-called positive method, that of deducing the rules of international custom from the observation of actual phenomena of international relations. His term "Halbsouverän" has since been adopted, though with many misgivings and questionings, by a succeeding century of jurists.

G. F. De Martens, whose "Précis du Droit des Gens" appeared in 1788, adopts the term. "L'ancien empire d'Allemagne se composait d'Etats qui, quoique jouissants de la supériorité territoriale, ne pouvaient se considérer comme entièrement souverains, à cause du lien de soumission qui les plaçait sous le pouvoir législatif et judiciaire de l'Empereur et de l'Empire. On les désignait souvent par le nom de mi-souverains." De Martens points out that one of the characteristics of the condition of semi-sovereignty is a limitation on the power of the semi-sovereign State to conclude Treaties.

Klüber, whose "Europäisches Völkerrecht" was published in 1819, observes:—"Les Etats mi-souverains ou dépendants n'ont ordinairement qu'une capacité limitée de contracter; et même des Etats independants peuvent restreindre cette faculté par des traités d'alliance avec quelque puissance étrangère."

Wheaton, writing in 1842, thus refers to the terms "semi-sovereign" and "vassal." "Treaties of unequal alliance, guarantee, mediation, and protection, may have the effect of limiting and qualifying the sovereignty according to the stipulations of the Treaties. States which are thus dependent on other States in respect to the exercise of certain rights essential to perfect external sovereignty have been termed semi-sovereign States."

"Tributary States, and States having a feudal relation to each other are still considered as sovereign, so far as their sovereignty is not affected by this relation." "The king of Naples had been a nominal vassal of the Papal See, ever since the eleventh century; but this feudal dependence, abolished in 1818, was never considered as impairing the sovereignty of the Kingdom of Naples."

Heffter, whose "Europäisches Völkerrecht der Gegenwart" appeared in 1844, speaks thus of the term "Semi-sovereignty:"—

"Il faut convenir que l'idée d'une mi-souveraineté est très vague et présente même une espèce de contre-sens, le mot de souveraineté excluant toute dépendance d'une puissance étrangère. Il n'est pas même possible de ramener à un type unique les restrictions nombreuses dont cette dernière est susceptible. Néanmoins, comme le terme a une signification double: souveraineté extérieure, par rapport aux puissances étrangères; souveraineté intérieure, par rapport au régime intérieur de l'Etat, il est permis de parler d'un Etat mi-souverain pour indiquer la nature bâtarde d'un corps politique condamné à subir dans ses rapports extérieurs l'impulsion d'une puissance supérieure."

Heffter cites as examples of semi-sovereignty Moldavia and Wallachia, described, as will be seen, by other writers as States subject to suzerainty.

Heffter's classification of the various modifications of sovereignty includes under separate heads— (1) United States under Federal Union, or composing a confederation— (2) States under tribute, or subject to servitudes— (3) States bound by facts of mediation or guarantee — (4) States under a protectorate; and lastly— (5) States under Suzerainty.

These last he includes under: "Rapports féodaux; une puissance ayant donné une souveraineté en fief, le souverain de celui-ci s'est rendu volontairement feudataire de l'autre. La constitution d'un fief fait naitre certains droits privés et certains

devoirs réciproques entre le suzerain (dominus feudi) et le vassal, notamment celui d'une fidélité mutuelle." "Les Etats feudataires sont devenus de nos jours très rares."

Sir Robert Phillimore, whose Commentaries on International Law first appeared in 1854, and in a last edition in 1879, does not apparently define Suzerainty otherwise than by describing it as a feudal relation. "But in fact," he observes, "it is a relation which can hardly be said to exist in these days." "States that pay tribute, or stand in a feudal relation towards other States, are, nevertheless, sometimes considered as independent sovereignties. It was not till 1818 that the King of Naples ceased to be a nominal vassal of the Papal See; but this feudal relation was never considered as affecting his position in the Commonwealth of States."

Phillimore divides the different kinds of States into two principal divisions:—"First. One or more States under one sovereign. Secondly. Several States under a federal Union." Under the first division he places States under Suzerainty. The sub-divisions of the first principal division are as follows: "(1) Single States under one Sovereign. (2) Several States perpetually united (reali unione) under one Sovereign. (3) The peculiar case of Poland. (4) Several States temporarily united under one Sovereign (Personali unione). (5) A State under the protectorate of another, or of others, but retaining its international personality. (6) The Ionian Islands. (7) The European Free Towns or Republics. (8) The peculiar case of Belgium. (9) The peculiar case of Greece. (10) States standing in a feudal relation to other States. The Turkish Provinces. (11) The peculiar case of Egypt."

This, it will be seen, is a quite different classification of States. The facts of each case are regarded as so essentially modifying the position of certain States that Belgium, Greece, and even Poland, are placed in separate categories as peculiar cases.

His reference to the term "semi-sovereignty" is as follows:—"Sixthly,—States which cannot stand this test, which cannot negociate, or declare peace or war with other countries without the consent of their protector, are only mediately and in a subordinate degree considered as subjects of International Law (though Grotius c. xxi., would seem to think otherwise.) In war they share the fortunes of their

protectors; but they are for certain purposes, and under certain limitations, dealt with as independent moral persons; especially in questions of comity, touching the persons and property of their own subjects in a foreign country, or of strangers in their own territory, and with respect to other matters of the like kind. States of this description are sometimes, but with admitted impropriety of expression, called semi-sovereign (Demi-souverain; halb-souverän). Such appears to have been the lordship of Kniphausen, in North Germany, which exercised independent jurisdiction over the inhabitants of a territory enjoying maritime traffic and a flag of its own, under the protection of the German Confederation and the Suzerainté (Hoheit, Oberhoheit) of Oldenburg. Such is or was the Republic of Poglizza, in Dalmatia, under the protection of Austria. Such were the provinces Moldavia and Wallachia, and the hereditary Principality of Servia, under the Suzerainté of Turkey."

Sir Travers Twiss, writing in 1861 ("The Law of Nations") thus refers to the terms Suzerain and semi-sovereign. "The States of the Roman Empire of the Germans enjoyed, subsequently to the Peace of Westphalia, the right to form offensive and defensive alliances amongst themselves and with Foreign Powers; yet no alteration took place in their feudatory relations to the Chief of the Empire, as their supreme Lord or Suzerain, until 1806, when the Emperor Francis II declared the Germanic Empire to be dissolved, and released the Electors, Princes and States, from their allegiance to him as Chief of the Empire. They thereupon became for the first time Sovereign Powers."

"Some of the more recent writers on the Law of Nations have applied the distinctive epithet of semi-sovereign to such States as are recognised as independent States under the public law of Europe, but have not complete rights of sovereignty." He points out that Heffter, though recognising the classification, considers it to be objectionable; and that Wheaton regards the term as a solecism; and proceeds:—"It is not desirable that this classification of certain States as semi-sovereign States should find a place in a system of law which is concerned only with the external relations, which States bear to one another as independent political communities. The term itself "semi-sovereign" points at once to another system of political law, and suggests rather a subordination of position analagous to that in which the Princes

and States of the Germanic Empire stood in former days relatively to the Emperor as their Suzerain or Supreme Lord, than a modification of the manner in which the foreign relations of an independent State, as such, are maintained. The international rights of the States, which rank in this category, are in substance as complete as those of any other independent State, and it is only in the mode in which those rights were exercised that a distinction is found to exist. Independent States in their normal condition communicate immediately with one another; but there are exceptional instances in which the communications of an independent State with Foreign Powers, are carried on through the medium of a third power, which has been acknowledged by public treaties as the authorised organ of such communications." He would prefer to term these States "Protected Independent States," to distinguish them from protected States which have abdicated altogether their independence, and do not maintain independent political relations with foreign Powers.

Bluntschli, whose work "Das Moderne Volkerecht" appeared in 1868, and "Le droit International Codifié" in 1874, points out that precision is hardly possible in the use of any of the terms which denote a state of dependence. "On peut se représenter cependant une foule de gradations entre l'état de liberté complète et l'état de dépendance qui n'autorise les rapports diplomatiques d'un Etat avec d'autres que par l'intermédiaire de l'Etat suzerain." But it will be seen that he uses the term "suzerain" in a distinctly non-feudal sense :—"Lorsque le souverainté d'un Etat dérive de cette d'un autre Etat, et que par suite l'un d'eux, pour reconnaître cette filiation, reste vis-à vis de l'autre dans un certain rapport de subordination, le premier est dit Etat vassal, et l'autre Etat suzerain. L'indépendance de l'Etat vassal doit en consequence, être nécessairement restreinte sur le terrein du droit international."

Under the title Semi-Sovereign he includes vassal States "Les Etats mi-souverains (Etats vassaux, Etats soumis à un protectorat, Etats faisant partie d'une confédération) doivent toujours céder la préséance aux Etats dont ils sont dependants (Etats souverains protecteurs). Vis-à-vis des Etats tiers l'Etat mi-souverain a, à coté et à l'égal des Etats complètement souverains, la position que lui accorde son titre reconnu ou son importance." Bluntschli points out that Treaties can be concluded

between unequals; for instance between Suzerain and Vassal.

Calvo, whose Spanish work on International Law appeared in 1868, groups together all States which fall short of complete sovereignty under the heading :—" Etats dependants, mi-souverains, tributaires, etc." and observes :—" Les Etats mi-souverains (ce titre l'indique suffisamment), manquent de quelqu'uns des droits essentiels de la souveraineté. Hertius les appelle " quasi-royaumes." Ils rentrent dans le droit international en tant qu'ils peuvent entretenir des relations diplomatiques avec les autres peuples. En temps de guerre, ils subissent généralement les conséquences de la situation faite à la nation dont ils dépendent; en temps de paix, ils doivent obtenir l'autorisation de l'Etat superieur pour conclure des traités. La mi souveraineté ne limite et ne restraint d'ailleurs que les droits internationaux, la considération extérieure de l'Etat qui vit sous ce régime."

Lawrence, an American writer, in his commentary on Wheaton, published in 1879, distinguishes semi-sovereign States from tributary or vassal States. He quotes Austin's objection to the term " mi-souverain " and cites Heffter, above quoted, on the use of the term.

Woolsey, writing in 1879, observes :—" A State which is under the protection of another may be sovereign in some respects but not absolutely sovereign." He cites the instance of Cracow, the Ionian Islands, Moldavia, Wallachia and Servia, and Monaco : and proceeds :—" For the purposes of International Law that State can only be regarded as sovereign which has retained its power to enter into all relations with foreign States whatever limitations it may impose upon itself in other respects. Thus the States of this Union " (the United States of America) " in the view of our science are not sovereign, for they cannot exercise the treaty making power, nor that of making war or peace, nor that of sending ambassadors to Foreign Courts. It is to be observed, however, that between States of qualified sovereignty the Law of Nations has application so far forth as it is not shut out by restrictions upon their power."

Woolsey will be seen, groups together under the head of protectionate States as Servia, Moldavia and Wallachia, the formal description of whose relation towards Turkey was that of Suzerainty ; in other words does not distinguish between the status of Suzerainty and that of Protection.

Hall, writing in 1890, sharply distinguishes between protected States and those under Suzerainty.

"For the purpose of International Law a protected State is one which, in consequence of its weakness has placed itself under the protection of another Power on defined conditions, or has been so placed under an arrangement between Powers the interests of which are involved in the disposition of its territory. The incidents of a Protectorate may vary greatly; but in order that a community may fall within the category of the protected States which are persons in International Law, it is necessary that its subjects shall retain a distinct nationality and that its relation to the protecting State shall be consistent with its neutrality during a war undertaken by the latter; in other words, its members must own no allegiance except to the community itself, and its international liberty must be restrained in those matters only in which the control of the protecting power tends to prevent hostile contact with other States, or to secure safety if hostilities arise. So long as these conditions are observed the external relations of the State may be entirely managed by the protecting Power. The most important modern instance of a protected State is afforded by the United Republic of the Ionian Islands, established in 1811 under the protectorate of Great Britain. In this case the head of the Government was appointed by England, the whole of the executive authority was practically in the hands of the protecting Power, and the State was represented by it in its external relations. In making treaties, however, Great Britain did not affect the Ionian Islands unless it expressly stipulated in its capacity as protecting Power; the vessels of the Republic carried a separate trading flag; the State received Consuls, though it could not accredit them; and during the Crimean war it maintained a neutrality the validity of which was acknowledged in the English Courts."

"States under the Suzerainty of others are portions of the latter, which during a process of gradual disruption or by the grace of the Sovereign have acquired certain of the powers of an independent community, such as that of making commercial conventions, or of conferring their exequatur upon foreign Consuls. Their position differs from that of the foregoing varieties of State in that a presumption exists against the possession by them of any international capacity. A member of a confederation or a protected State is *prima facie* independent, and consequently possesses all rights which

it has not expressly resigned ; a State under the suzerainty of another, being confessedly part of another State, has those rights only which have been expressly granted to it, and the assumption of larger powers of external action than those which have been distinctly conceded to it is an act of rebellion against the sovereign."

The following remarks of Hall are instructive, as showing at once the want of uniformity of usage as regards the terms Protection and Suzerainty when employed by different writers, and at the same time the possibility of the use of the same terms by the same writer in a manner either inconsistent with his own usage elsewhere, or unwarranted by historical facts.

"The Danubian Principalities and Servia have also usually been mentioned among protected States. As, however, both Roumania and Servia until their acquisition of independence by the Treaty of Berlin, legally formed part of the Turkish dominions, their case is the abnormal one of a Protectorate exercised rather against than in support of the country"

Here, it will be seen, Hall places under the category of protected States the Danubian Principalities and Servia, towards which the formal relationship of Turkey was that of Suzerainty. At the same time he gives a very drastic definition of the subordinate position of a vassal under Suzerainty. His theory as to rebellion by a vassal has been strangely contradicted by facts. The Christian States of Servia and the Danubian Principalities under the Suzerainty of Turkey made war on that Power without being considered by Turkey or by any other State as rebels ; and their complete independence as the result of that war was acknowledged by the Treaty of Berlin of 1878.

SUZERAINTY AND THE SOUTH AFRICAN REPUBLIC.

What conclusion is to be drawn from the foregoing citations--which might easily be paralleled—from leading authorities on International Law during the last century ?

(1) That the term Suzerainty is so exceedingly vague in modern International Law, and is used in so many different and opposed senses, that of itself it could serve as no guide to fix the mutual rights and duties of the British Government and of the South African Republic—parties to the Sand River Convention of 1852, to the Convention of Pretoria of 1881, and to the Convention of London of 1884.

(2) That, whether or not—a question to be considered later on—Suzerainty be the correct official phrase by which to designate the relationship between the Empire and the Republic, we must look not to the term but to other proofs if we wish to ascertain their mutual rights and duties. These other proofs must include in the first rank the text of the Conventions, the published record of the negociations, the official correspondence of the two Governments, and the subsequent declarations and subsequent conduct of the parties to the Conventions.

Fortunately we shall find, on investigating the proofs of the intention of the parties to the Conventions that we are not without a guide to the meaning of the term Suzerainty in relation to the Republic, apart from the preceding comparison of authorities on the Law of Nations who have treated generally on the subject. The term Suzerainty as used in the Convention of Pretoria in relation to the South African Republic does not quite float in the void.

In the following pages evidence as to the meaning of the term in the Convention of Pretoria, and its applicability to the present relations of the Empire and the Republic will be considered.

THE HISTORY OF THE THREE CONVENTIONS WITH THE SOUTH AFRICAN REPUBLIC.

At the time of the overthrow of the authority in Holland of the last stadtholder of the House of Orange-Nassau, the British Government took military possession of the Dutch Cape Colony in the name of the exiled Prince. Here, as elsewhere, the temporary was found to be the most permanent. With the exception of a brief period of retrocession to the Batavian Republic, the Colony has remained to the present day under the authority of the British Crown; being with other Dutch possessions formally ceded under the Treaty of 1814 by the newly established Kingdom of Holland to the British, then in military occupation of the Cape.

The wishes of the Dutch Colonists were not consulted as to this cession, but Article VII of the Convention allowed a period of six years within which such of the inhabitants as were unwilling to become British subjects might dispose of their properties and leave the Colony for any other country they might choose. That period expired in 1820. Not until the year 1836 did any great migration of the Dutch

Colonists beyond the frontier of the Colony take place. In 1836 occurred the striking movement which is known in South Africa as the Great Trek. The causes of this movement of a large section of the Dutch population were various. Trekking beyond the border of the Colony by isolated farmers with their ox-wagons, rifles, wives, children and slaves, was not unknown during the Dutch *régime*. Newer pastures were always open in the unexplored interior, and against the warlike native tribes the Dutch trekkers felt a complete reliance on their rifles and their bibles. The immediate cause of the movement was undoubtedly a mistaken negrophilist and anti-Dutch policy in the Government of Cape Colony, at the instigation of well meaning but utterly misguided missionaries sent from England by the London Missionary Society and other propagandist bodies. It was not alone that slavery was abolished by the Imperial British Parliament, under a philanthrophic impulse which took little heed of time or place ; it was not alone that the farmers thus deprived of their property received no adequate compensation ; it was not alone that the whole foundation of discipline among the savage races in subjection was thus forcibly overturned at the dictates of an Imperial Power six thousand miles from the scene of its legislative experiments. It was that the settled policy of the Imperial Government, of British public opinion, and of the Cape Government (then in the hands of a direct Imperial delegate) was consistently set to establish an impossible equality of the savage Kaffir with the white man, and in every dispute between black and white to assume that the white man was wrong, more especially the Dutch white man. Kaffir savages started campaigns of blood and fire among the farmers on the borders of the Colony. The Imperial Government failed to suppress these outrages ; and if the farmers defended themselves they were treated as aggressors by the British authorities, and were deprived of the fruits of their victory. A stream of calumny on the Dutch farmers and their methods of dealing with their savage opponents was incessantly directed by the English missionaries, so as to influence English home opinion and to hopelessly prejudice the Imperial Government. Life under such circumstances became unendurable and the Great Trek began.

No adequate history of this movement can here be attempted, and attention must be confined to the aspects of this step on the part of the Dutch farmers from the point of

view with which we are here concerned, that of the right, under the Law of Nations, of the community which they were destined to found.

For many years after the date of the Great Trek the British Government, adhering to its doctrine of "indissoluble allegiance"—expressed in the formulas "once a subject always a subject": "Nemo potest exuere patriam"—denied the right of the Dutch farmers to shake off their allegiance by passing the frontier of the Colony. In 1870 this doctrine has been finally renounced by the British Government; a renunciation embodied in an Act of Parliament of that date. The Emigrant Farmers were pursued by proclamations announcing to them the doctrine of indissoluble allegiance, and warning them that they were regarded by the British Government as British subjects, that all their acts fell within the jurisdiction of British Tribunals, and that all territory occupied by them was *ipso facto* annexed to the British Crown.

The Emigrant Farmers were deterred by proclamations from Capetown no more than by the assegais of the Zulus. They founded the Republic of Natalia, with a port on the Indian Ocean, having routed Dingaan and the blood-stained Zulu despotism which he had established over the subject tribes of South-East Africa. The Republic of Natalia was overthrown in 1842 by British military force, and the territory is now the British Colony of Natal. The Emigrant Farmers retired beyond the Drakensberg range and established the Republic of the Orange River. The British Government overturned the Republic in 1848 at the battle of Boomplaats, and declared the territory a British possession under the title of the Orange River Sovereignty. The Emigrant Farmers fled North beyond the Vaal River and founded the communities which have since coalesced into the South African Republic. The British troops did not cross the Vaal River, but a British proclamation was issued placing a price on the head of Pretorius, leader of these Emigrant Farmers who fled so persistently from British rule.

Before we consider the great reversal of British policy in regard to these emigrants which a few years produced, it may be well to advert to the question at issue between themselves and the British Government as to the right of expatriation. It will have been seen that a clause of the Convention of 1814 expressly recognised the right, which at that time had become general under the Law of Nations, of

the inhabitants of a ceded territory to reject the new allegiance by withdrawing themselves from the territory. The Treaty of Campo-Formio of 1797, the Treaty of Cession of Mulhouse of 1798, the Treaty of Geneva of 1798, and the Treaty of Amiens of 1802 recognised a similar right in the inhabitants of ceded territory. Even as far back as the Treaty of Ryswick of 1697 and of Utrecht of 1713 the right had already been acknowledged; an acknowledgement in part of the wider right of expatriation claimed by Grotius (ii. v. 24). At the present day, as is well known, no one would dispute a custum sanctioned as recently as by the Treaty of 1860 relative to the annexation of Savoy, the Treaty of 1863 annexing the Ionian Islands to Greece, the Treaty of 1866 annexing Schleswig-Holstein to Prussia, and the Treaty of 1871 relative to Alsace-Lorraine. What is important to know is that the right of expatriation, possessed by the inhabitants of ceded territory, was not regarded as a matter of special grace in an individual instance, but was generally recognized at the time of the cession of the Cape to the British Crown.

It may be argued that the term of six years referred to in the Convention of 1814 had expired in 1836; but it is clear that so narrow and technical a method of construing provisions introduced for the benefit of inhabitants of territories forcibly transferred to the conqueror is not in accordance with the liberal spirit which permeates the modern Law of Nations.

In any case, the claim of the British Government to the indissoluble allegiance of such subjects would not be so strong as to warrant its enforcement with a rigidity so much in contrast with its full recognition, in the case of the United States of America, of the right of British born and English speaking subjects, not to peaceably depart from British territory, but to carve a Republic out of British territory by force of arms.

It is lastly on record that, in accordance with the famous Stockenstroom opinion, given in reply to their enquiries at the time of the Great Trek, the Emigrant Farmers believed that they had legal warrant under the authority of a British legal official to withdraw themselves from British allegiance by abandoning British territory.

We now come to the next stage in the relations between the Boer emigrants and the Imperial Government. One of the characteristics of the system of party Government in

England is that great changes of policy in Colonial matters are always possible. Under the *régime* of one party a forward policy may be pursued, that is, a policy of annexing new territory and assuming new responsibilities. This policy has usually but not invariably been the special policy of the Conservative party. On the other hand, the policy of what has been styled the Manchester School of Economists, the policy of Free Trade and non-expansion of territory, has usually been that of the Liberal party. After the period of expansion, after the annexation in 1842 and 1848 of two of the South African Republics founded by the Boers, the pendulum of Imperial policy began to swing back and non-expansion became the watch word. A variety of causes contributed to this change of public opinion in England. The interminable series of wars with the Basutos and other natives, resultant on the annexation by the British forces of the territories occupied by the Boer emigrants, became no less unpopular than expensive. A British Imperial Commissary in an official report described the territories as a howling wilderness," an impression as to the value of these territories which persisted in England until the discovery of gold in the Witwatersrand in 1886. The war with the Basuto tribe was particularly expensive and discouraging. The power of Moshesh, the Basuto Chief, was really in greater part a creation of the negrophilist and anti-Boer policy, which missionary influence had induced the Imperial Government to pursue for many years. In 1852 Moshesh inflicted a humiliating defeat at the battle of Berea on the British General Cathcart, Governor of Cape Colony, and a large army. Astutely opening a golden bridge for his defeated enemy, Moshesh sued for peace on the day after his defeat of the Imperial force. The British General availed himself of the bridge, and retreat in South Africa became the order of the day. The Republic of Natalia was not surrendered: the possession of the seaport of Durban being regarded as an Imperial necessity as much as that of Capetown, in order to preserve the route to India.

The first recognition of the Independence of the Boer Communities is that embodied in the Sand River Convention of 1852. Moshesh, the Basuto Chief, with the characteristic impartiality of the Kaffir, and with a quite European indifference to the benefits he had received from the Imperial

Power, had opened negociations with Pretorius, the leader of the Boer emigrants north of the Vaal River, with the object of making common cause against the British arms. The British Government resolved to check this alarming development, and for the first time adopted the policy of recognising the independence of the Boers.

On the 16th January, 1852, a meeting was held at the Sand River between the British Imperial Commissioners, Hogg and Owen, and Pretorius, the Commandant-General of the Boers of the Transvaal (on whose head a price had been set), Joubert, Kruger, Lombard, and other of their leaders. It was agreed that the Emigrant Farmers should be free to manage their own affairs without the interference of the British Government, this policy of non-interference being binding on both sides; and other stipulations for facilitating the course of justice, the operation of trade and good treatment of the natives were agreed upon. The South African Republic, founded in 1848, was thus recognised by the British Government in 1852. In 1858 the constitution of the Republic was promulgated, providing that the Government should be exercised by an elective President, an Executive Council, and a Parliamentary Assembly or Volksraad.

In 1854 the Orange River Sovereignty was abandoned by the British forces, and the Republic of the Orange Free State established in its stead. The Treaty of Bloemfontein of the 23rd February, 1854, is the international instrument embodying the second British recognition of the Boers' right of expatriation. It is the more remarkable in that their independence was restored to the Boers of the Orange River, notwithstanding the fact that a large section of the inhabitants and the majority of the Legislative Assembly were opposed to the withdrawal of the Imperial Power, and sent a deputation to the British Parliament to protest against it. But the Manchester School was then dominant; non-expansion was the cry, and Basuto wars were expensive; so the second Republic of the Boers was left to fight its own battles.

Of the period intervening from that date until the Convention of Pretoria of 1881, the most salient facts (bearing on the relations of the Boer Republics and the British Government) were the intervention of Sir Philip Wodehouse in 1868 between the conquering Free State and the conquered Basutos; the British annexation of the Kimberley

Diamond Fields, discovered in 1869 in Griqualand West, part of the territory of the Orange Free State; the annexation of the Transvaal by Sir Theophilus Shepstone in 1877; and the retrocession under the Convention of Pretoria of 1881.

After fourteen years harassing and calamitous warfare, the Orange Free State, abandoned by the Imperial Power to the fury of the Basutos, succeeded in reducing their savage opponents. The Imperial Governor of the Cape intervened and deprived the Free State of the fruits of its victory, in 1868, compelling the retrocession of almost the whole of Basutoland and taking the Basutos under Imperial protection. (It may be observed, in passing, that the gratitude of the Basutos for this intervention has been strikingly displayed. In 1883 they worsted the British forces in a prolonged campaign and now enjoy, in the possession of their arms and horses and territory and a standing army of sixty-five thousand rifles, the fruits of successful rebellion.) For the annexation of the Diamond Fields, which yield an annual return of four million pounds sterling, the British Government paid a trivial compensation of some ninety thousand pounds to the Orange Free State.

The annexation of the Transvaal in 1877 by Sir Theophilus Shepstone as Imperial Commissioner was grounded on what was alleged to be the wish of the inhabitants, and on the danger to which an alleged state of internal disorder and of inability to reduce the natives to subjection exposed the neighbouring States and Colonies. The period of British Rule in the Transvaal was terminated by a successful uprising of the Boer Burghers, under the leadership of a Triumvirate (Kruger, Pretorius and Joubert). After the defeat of the British forces at Majuba Hill and Laing's Nek, the retrocession of the territory was resolved upon by the British Government, then under the Premiership of Mr. Gladstone. This arrangement was embodied in the Convention of Pretoria of 1881, restoring the Republic and at the same time establishing a British "Suzerainty." In the course of two years the provisions of the Suzerainty Convention came to be regarded as impracticable by the Burghers of the Transvaal, and a deputation was appointed to proceed to London to negociate the conclusion of a new Convention. These negociations were successful, and their result is embodied in the Convention of London of 1884.

In his despatch of the 16th October 1897, Mr. Cham-

berlain, the present British Secretary for the Colonies, raises the contention—hitherto unheard of in British correspondence since 1884—that a British Suzerainty exists over the South African Republic. It now remains to consider the validity of this contention.

The Contention that a British Suzerainty exists over the South African Republic.

Mr. Chamberlain's assertion that a Suzerainty exists over the South African Republic is embodied in the following extract from his despatch of the 16th October, 1897, addressed to the British High Commissioner for South Africa, Governor of the Cape Colony.

"By the Pretoria Convention of 1881, Her Majesty as "Sovereign of the Transvaal Territory, accorded to the in- "habitants of that territory complete self-government, subject "to the Suzerainty of Her Majesty, her heirs and successors, "upon certain terms and conditions and subject to certain "reservations and limitations set forth in thirty-three Articles, "and by the London Convention of 1884, Her Majesty, *while* "*maintaining the preamble of the earlier instrument*, directed "and declared that certain other Articles, embodied therein "should be substituted for the Articles embodied in the "Convention of 1881. The Articles of the Convention "of 1881 were accepted by the Volksraad of the Transvaal "State, and those of the Convention of 1884 by the Volksraad "of the South African Republic. Under these Conventions, "therefore, Her Majesty holds towards the South African "Republic the relation of a Suzerain who has accorded to "the people of that Republic self-government upon certain "conditions."

In a Despatch of the 16th April, 1898, addressed to the High Commissioner, Dr. Leyds, the State Secretary of the Republic, sets forth the objections of the Government to Mr. Chamberlain's novel proposition. Dr. Leyds' Despatch deals with other topics of discussion between the Imperial and the Republican Governments—notably the objections put forward by Mr. Chamberlain to certain legislation affecting Aliens in the Republic, to the methods of negociating treaties between the Republic and foreign Powers, and to certain references to the armed invasion of the territory of the Republic by Dr. Jameson, Administrator of the British terri-

tories of Matabeleland and Mashonaland. Here I propose only to deal with those portions relevant to Mr. Chamberlain's theory of the existence of a Suzerainty and to the corollaries he annexes to that Suzerainty—a right on the part of the British Government to refuse to submit questions in dispute to arbitration, and an incompetence on the part of the Republic (due to its international status) to appeal to the general rights of nations under International Law.

I may say, by way of preface, that the present Despatch of the Republican Government is of peculiar interest to students of and writers on the Law of Nations, as well as to practical politicians, in consequence of its distinct appeal to the authority of that Law as decisive of rights and duties of civilised States; and at the same time of its vindication of the right of a weak State as against a mighty Empire to appeal to the conscience of the civilised world—the ultimate source of those customary rules which are International Law. I shall draw freely from the Despatch in setting forth the case—the conclusive case made out against Mr. Chamberlain's theory of a Suzerainty. At the same time I shall adopt a somewhat different order in arranging those arguments—so as to disentangle them from their present implication (unavoidable in a Despatch which is the continuation of a lengthy correspondence) with subsidiary matters. Also I shall adduce some considerations not to be found in the Despatch.

That Mr. Chamberlain in October 1897 was not justified in asserting the existence of a Suzerainty over the South African Republic will be clear when we consider

1. The already published record of the negociations prior to the drafting of the 1884 Convention.

   In passing it may be noted that one of the most important, and indeed, unanswerable portions of these records is for the first time published in the present Despatch, but that document must have been as accessible to the Colonial Secretary as to the Republican Government.

2. The text of the two Conventions.
3. The altered conditions of the relation introduced as an immediate consequence of the Convention of 1884.
4. The subsequent declarations and conduct of the two Governments.

5. The opinion of jurists who have referred expressly to this question in its bearing on the South African Republic.
6. We shall lastly consider hitherto unpublished evidence taken from the present despatch and from other sources.

THE ALREADY PUBLISHED RECORDS.

I have already shown that the word "Suzerainty" is of such vague import that there is no general concensus of opinion among jurists either as to the precise meaning to be ascribed to the term under modern International Law, or as to the concrete cases falling under the category of Suzerainty; and that it is therefore necessary to seek in the instrument creating the relation the extent of the powers and duties annexed to it.

Fortunately, however, in this case we are spared the necessity of any lengthy search in order to define what meaning is to be attached to the word when used by Mr. Chamberlain in relation to the South African Republic. The Suzerainty referred to can only be that established by the Convention of Pretoria of 1881.

"As an introduction to the discussion of the Suzerainty "question, this Government desires to premise that when- "ever in the despatch now under reply, mention is made of "Suzerainty, Her Britannic Majesty's Government can only "refer to such Suzerainty as is constituted by and defined in "the Convention of Pretoria of 1881.

"On such basis, therefore, are founded the objections of "this Government, which, in its opinion, perfectly justify the "conclusion that it cannot recognize the existence of any "Suzerainty since the Convention of 1884." (Despatch, "sec 4).

The Despatch of Earl Kimberley, the British Colonial Secretary, addressed to Sir H. Robinson, of the 31st March, 1881, defines the term with a fullness and precision which precludes the necessity of further inquiry. "Entire freedom of action will be accorded to the Transvaal Government so far as is not inconsistent with the rights expressly reserved to the Suzerain Power. The term Suzerainty has been chosen as most conveniently describing superiority over a

State possessing independent rights of government subject to reservations with reference to certain specified matters."

"The most material of these reserved rights is the control of the external relations of the future Transvaal State, which will be invested in the British Government, including, of course, the conclusion of treaties and the conduct of diplomatic intercourse with foreign Powers." The importance of the fact that the powers of the Suzerain are those expressly mentioned in the instrument—the Convention of 1881—I shall refer to later on. It is worth while pointing out that the portion of the Convention of 1881 which established the Suzerainty can hardly be regarded as of incontestable jural validity. *Ab initio*, the Volksraad of the Republic protested against the Suzerainty clauses, on the ground, as the present Despatch shows, that they were of a more far-reaching nature than those laid down in the previous conditions of peace concluded by the British General, Sir Evelyn Wood, and the Republican Triumvirate, Kruger, Pretorius, and Joubert; and as the Despatch further notes, "The Volksraad resolution in question was duly communicated to Her Britannic Majesty's Government"

In other words, as the present Commandant-General, Joubert—one of the former Triumvirate—reminded me in a recent conversation, the Suzerainty Convention of 1881 was unfairly imposed on the Republic, and was not freely assented to by the Republic. In fact it was only agreed to under protest to prevent further bloodshed.

At the same time, whatever question there may be as to the jural validity of the Suzerainty of 1881 there can be no question as to the steps taken by the Government of the Republic to procure the abolition of this obnoxious feature of the settlement of 1881. The published Blue Books of the British Government recording the negociations which terminated in the Convention of London of 1884 are sufficient in themselves to show that the object with which the Transvaal Deputation visited London was to procure the total abrogation of the Convention of Pretoria of 1881. In the letter of the Deputation to Lord Derby, bearing date 14th November 1883, it is declared that the Republic objects to the Convention of 1881 not in part "but in its entirety"; that the Convention had been imposed on the Republic against its will; that it was framed in violation of the preliminary Treaty of Peace of 21st March 1881, as regards the nature of the

Suzerainty and as regards the regulations for the treatment of natives, and that its provisions touching these matters were only ratified by the Volksraad under compulsion; that its provisions had become unworkable as regards the Suzerainty as well as in other respects. Finally, as regards the Suzerainty, the Deputation declared that the relationship of Suzerainty had caused serious inconvenience on account of the "complicated manner in which every communication with a foreign Power, however simple, has to be carried on."

But there is more evidence than this in the published record of the negociations that the omission of the term "Suzerainty" from the Convention of 1884 was deliberate.

The letter of the Deputation to Lord Derby, dated 5th February, 1884, shows that the draft he was then preparing was taken by them to embody an agreement between the Deputation and Lord Derby that the Suzerainty was to be abolished.

"We would respectfully submit to your Lordship's consideration whether it would not be possible to have the other Articles of the New Convention, namely, those referring to the abolition of the Suzerainty and to the reduction to its legal proportions of the debt of the Republic, simultaneously drawn up and communicated to us in order to accelerate the complete settlement of the matter." As the present Despatch points out, Lord Derby's letter of the 15th February 1884, sending the Deputation a draft of the new Convention of London, shows that the method of omitting obnoxious provisions was the one deliberately adopted. "*By the omission* of those Articles of the Convention of Pretoria which assigned to Her Majesty and the British Resident certain specific powers and functions connected with the internal government and the foreign relations of the Transvaal State, your Government will be left free to govern the country without interference and to conduct its diplomatic intercourse and shape its foreign policy, subject only to the requirement embodied in the fourth Article of the new draft, that any Treaty with a foreign State shall not have effect without the approval of the Queen." That the Deputation fully believed that the abolition of the Suzerainty—one of the principal objects of their mission to London—had been secured is proved by their report, published in 1884, and presented to the Volksraad. The report bearing date 28th July, 1884, contains the following passage:—

"7. Leaving the consideration of that Convention entirely to your wisdom and declaring ourselves ready, when the matter was being dealt with, to give every information desired, your Deputation with respect, beg to point out some cardinal points by which this London Convention is distinguished from the Convention of Pretoria.

A. "It has been drawn up in both languages, Dutch and English, with equal validity in Law. In this connection your Deputation wish to remark, that, during the whole of their negociations, they have made use of the Dutch language, their documents being only accompanied by a literal translation in English.

B. It is quite bilateral, so that your Deputation is not placed in the humbling position to have to receive a unilateral document from a Suzerain Government by way of rule and prescription, but whereby they were acknowledged as a free contracting party.

C. It also puts an end to the British Suzerainty, and together with the official acknowledgement of its name, it reaccords to the South African Republic complete self-government, subject to one reservation only, with reference to the concluding of treaties with foreign Powers. Together with the Suzerainty, the different stipulations and restrictions of the Pretoria Convention, which had been reserved by Her Majesty's Government, as Suzerain are of course also abolished."

As the present Despatch points out, it was on the faith of that public assurance that the Convention was ratified by the Republic. "Acting on that report, the Volksraad of this Republic ratified the Convention of London." The Volksraad had every reason to feel assured on the point. As the Despatch states:—"7. In the Convention of Pretoria, to which the Deputation objected, the term (Suzerainty) appears. In the Convention of London the term has disappeared. This disappearance cannot be accidental. The omission was deliberate; one of the parties had objected to it as an obnoxious stipulation, and it was excluded in the new Convention." The following is the Volksraad resolution ratifying the Convention of London.

VOLKSRAAD RESOLUTION, 8TH AUGUST, 1884.

Article 55. The Volksraad having considered the new Convention entered into between their Deputation and the

British Government, in London, on the 27th February, 1884, and also the negotiations conducted between the contracting parties, which had led to the said convention :

Agree with the standpoint taken up by their Deputation, that only an agreement based on the footing of the Sand River Treaty can fully satisfy the people of the Republic, and they also share the objections put forward by the Deputation, to the Convention of Pretoria, and also their objections to the London Convention on the following points, viz. :—

1. The regulation of the frontier, especially to the west of the Republic, to which, in fact, the Deputation only submitted under express condition with which the Raad agrees.

2. The right of veto reserved to the British Crown in respect of treaties entered into by the Republic with foreign Powers, and

3. The regulation of the debt. But seeing that considerable advantages have been assured to the Republic in the said Convention of London, especially by restoring the independence of the country :

Resolve, with gratitude for the generosity of Her Brittanic Majesty, to ratify the said Convention, as they hereby do."

THE TEXT OF THE CONVENTIONS.

We come now to a consideration and comparison of the texts of the two Conventions. I may observe in passing that this is a method of construing documents of legal purport—looking at the text, and, except in certain cases, rejecting external evidence—which may be taken as almost a peculiar growth of English jurisprudence, even as regards private contracts or national legislation. It is not at all appropriate to the construing of documents embodying an international compact, and has never been accepted by the jurists or tribunals of other States.

Nevertheless, since a contention so minutely technical has been raised in the Despatch of Mr. Chamberlain—a contention that the preamble of a former Convention continues in force, although all its articles have been superseded —it may be desirable to see if the text will throw any light on the matter. We find the following facts, as set forth in the present Despatch (Section 11).

1. "In the Convention of Pretoria of 1881 express 'mention is made of the Suzerainty, both in the preamble and

"in the Articles. In the Convention of London of 1884 no "mention of a Suzerainty is made either in the preamble or "in the Articles." If it were intended that the Suzerainty should be retained, why was not reference made to it in the only Article (Article 4) in which such reference would be appropriate—that relating to the veto in foreign Treaties? "In Article 18 of the Convention of 1881 the High Commis- "sioner is referred to in connection with the approval of "Treaties, as "representing the Suzerain." In that of 1884 "no reference is made to the approval of the Queen as being "that of a Suzerain." And this, although the Convention of 1884 is confessedly a recension of that of 1881 in which the words appear. "The omission must therefore have been intentional.".

2. "When any provision of the old Convention of 1881 "is intended to be retained it is repeated in that of 1884." For example, the guarantees of the rights of natives in Articles 13, 14 and 15 of the Convention of 1881 are re-stipulated in Articles 8 and 19 of the Convention of 1884. This shows that the Convention of 1881 in its entirety was taken as about to come to an end.

3. "The text of the preamble of the Convention of Lon- "don of 1884 shows clearly that it was not merely the Articles "of 1881 which were intended to be altered (leaving the pre- "amble of 1881 in force), but also the whole convention. The "preamble of 1884 does not speak of "New Articles." It "speaks of "the following Articles of a *New Convention*."

4. "The preamble of 1884 expressly acknowledges a New "State; no mention is made in it of the "Transvaal State "subject to the Suzerainty of Her Majesty" as is the case in "the preamble of the Convention of 1881; but of the South "African Republic, without further description."

5. If the old preamble of 1881 were taken to be in force, an absurdity would be the result; "Two preambles "would exist, that of 1881 and of 1884, in direct opposition "to each other."

6. "The provision in the final lines of the preamble of "1884 that, pending the ratification of the new Convention, "the old Convention is to be in force, must imply that, after "ratification of the new the old cases have to have effect."

7. I may here point out that the fact that Articles have hitherto been taken to constitute a Con- vention in negotiations between the Empire and the Republic, may be seen by referring to the Swaziland

Conventions of 1890 and 1894. In the preambles the text runs "the following Articles . . . shall constitute and be a Convention."

8. I may also point out that even under the narrow rules of interpretation adopted by English lawyers for national legislation or for private contracts, it is absurd to suppose that any court of law would hold the preamble of a statute or of a contract to be in force after all the clauses had been superseded. In fact, in English Courts, the preamble of an existing Statute (none of the clauses of which have been repealed) cannot, as a rule, be even cited, unless the text of the clause is ambiguous or in some way requires elucidation.

9. Among rules of interpretation of international agreements, Woolsey (International Law, page 180) summarising Grotius and Vattel, includes the following :—

"If two meanings are admissible, that is to be preferred which is least for the advantage of the party for whose benefit a clause is inserted. For, in securing a benefit, he ought to express himself clearly. The sense which the acceptor of conditions attaches to them ought rather to be followed than that of the offerer."

"Odious clauses, such as involve hard conditions for one party, are to be understood strictly, so that their operation shall be brought in the narrowest limits" (Cited in Despatch, section 10).

"The applicability of these rules to the question of the "existence of a Suzerainty is obvious.

"(1) If a Suzerainty were intended to be retained for "the benefit of the British Government, it was for the British "Government to see that there was no doubt or ambiguity "about its retention.

"(2). Such onerous obligations of the Republic as exist "must be distinctly defined, but, in the opinion of this "Government, on no account by an interpretation of the "Secretary of State." In other words, the duties of the Republic are to be interpreted strictly, and are not to be extended by analogy or inference ; and least of all are to be interpreted by the mere arbitrium of the other party to the agreement.

As the Secretary for the Colonies seems strangely inclined (though the language of his despatch is not very clear on this point) to deny the applicability of the principles of Inter-

national Law to the interpretation of the Convention of London, the Despatch from Pretoria points out that these rules of construction now cited are identical with those of the Courts of Law of England as to all agreements.

Arguments based on the text of the Conventions, but partly of a quasi-legal character, have been used in the discussions in the British Press which, although of no great moment, may deserve passing notice. The Despatch of the Republican Government does not refer to them, as they were not referred to by the Colonial Secretary.

(1). It has been said that, if it were intended to abolish the Suzerainty established under the Convention of 1881, it would have to be abolished in express words in the Convention of 1884.

There are more answers than one to this argument. In the first place, it was only in the Convention of 1881 that the Suzerainty was established. When that Convention was superseded the Suzerainty disappeared with it. In the next, it is impossible not to recognise the political difficulties before the British Government who restored the internal political independence of the South African Republic in 1881, and were in 1884 prepared to recognise a still larger measure of freedom—the shaping of its foreign policy. There would have been obvious inconvenience, from a party point of view, of making the retreat of the British Government more explicit than was necessary. Lastly, and this is alone sufficient, it appears from his Despatch already cited that Lord Derby deliberately adopted—for whatever reason seemed sufficient to him—the method of *omission* of obnoxious provisions. In other words, the Suzerainty was abolished in the same way that the right of moving troops in the territory of the Republic was abolished—by omitting the provisions referring to it.

(2). It has been said that the form of the Conventions of 1881 and of 1884 is not that of a contract between two independent States, but rather that of a grant from Her Majesty (compare Mr. Chamberlain's Despatch, section 8).

To this again there are more answers than one. It would be sufficient to point out that it is no longer open for Mr. Chamberlain to maintain that any of the three Conventions with the Republic—that of Sand River, of Pretoria, or of London—is anything but an international compact between the two States. Whatever the form may be, all three instru-

ments have been deliberately described by the British Government, not as grants from the British Crown, but as Conventions equally binding on both parties to the agreement. In the Conventions of Pretoria and of London, the Sand River Convention is so described (Article 15, Convention of Pretoria; Article 8, Convention of London). In the texts of the Conventions of Pretoria and London officially published by the British Government the same term is used to describe these documents. Furthermore, many express acknowledgements of their mutually binding character may be found in the whole series of the correspondence between the Governments, and may be even found in Mr. Chamberlain's despatch (section 17). Lastly, it is also clear that here too it is impossible to ignore the political conditions under which these documents were drafted. At the negotiations after Majuba, ending in the Convention of Pretoria, the delegates of the South African Republic, being naturally desirous of securing peace and independence, were prepared to accept those rights of the Republic under any form more especially in view of the difficulty before the then British Government, of which Mr. Chamberlain was a member, of securing the assent of the British Parliament and the British public to any retreat of the British arms. They looked, in any case, rather to substance than to form. The same considerations apply to the form of the Convention of London, with the added consideration that the precedent had already been set by that of Pretoria. In any case the form of the document is no conclusive guide to its legal effect. To take an illustration from private law; the instrument which created a subordinate a partner might well be in the form of a grant, but the legal rights of the partners in the future would not be decided by the form but by the substance of the agreement.

(3). It has, lastly, been suggested that the only recognition of the independence of the Republic is that contained in the preamble of the Convention of Pretoria of 1881, which also contains a declaration of the Suzerainty of Her Majesty; and that, if the preamble of the Convention of Pretoria and the Suzerainty therein contained are at an end, so is the recognition of the independence of the Republic.

It might be sufficient to say that any recognition of a State implies its independence; and that so far from inde-

pendence requiring recognition, the contrary is the case—the State's subordination has to be proved. But, confining our attention to the texts, it may be pointed out that the first words of the preamble of the Convention of London of 1884 contain the phrase "the Government of the South African Republic." If a Government exists and is recognised, it must be independent and self-governing.

Before leaving this section of the subject, I must again point out that such methods of minute textual criticism as are imported into the discussion of an international Convention by the assertion of Mr. Chamberlain as to a supposed persistence of the preamble of a superseded Convention, are absolutely alien to the spirit or methods of interpretation of the Law of Nations.

Passing now from consideration of the mere words of the text of the Conventions and approaching the question of the alleged Suzerainty from a more general point of view, it will be clear that the futility of the present assertion of a Suzerainty is only equalled by its formal invalidity.

If it were open to the British Government to validly claim wide and undefined rights as a Suzerain; if the meaning of the rights of a Suzerain were left to be interpreted by deduction from the confused and varying practice and still more varying theory of the last century, there might be something comprehensible, however invalid, in the contention. But the hands of the British Government are not free. They are bound by their own interpretation of Suzerainty as set forth in the despatch of Earl Kimberley of the 31st March, 1881, already cited.

"Entire freedom of action will be accorded to the "Transvaal Government so far as is not inconsistent with the "rights *expressly* reserved to the Suzerain Power. The term "Suzerainty has been chosen as most conveniently describing "superiority over a State possessing independent rights of "Government, subject to reservations with reference to certain "*specified* matters."

It is evident therefore that, if a Suzerainty had been retained under the Convention of London, of 1884, the only rights claimable by the British Government would be those "expressly reserved to the Suzerain Power" on "certain specified matters." Therefore the rights expressly reserved by the Convention of London would be the sole rights which the British Government could claim. They would not be entitled

to import—as a consequence of the vagueness and indefiniteness of the word "Suzerainty"—vague and undefined rights deducible from a position of vague and undefined superiority. And obviously in the Convention of London no right is conferred on the British Government of rejecting arbitration on disputed points of interpretation, or of constituting itself sole arbiter. On the contrary, the principle of arbitration by a friendly third Power is expressly accepted. (Article 1 of the Convention of London.)

THE ALTERED RELATIONS BETWEEN THE REPUBLIC AND THE EMPIRE SINCE 1884.

The Despatch of the Republican Government goes on to point out (sec. 9) that it is manifest that the Suzerainty established by the Convention of 1881 was abolished as the result of the Convention of 1884, when the alterations in the relationship between the British Government and the South African Republic are considered.

The Suzerainty rights under the Convention of 1881 may be grouped under the heads of—

(1.) Incapacity of the Republic to take action for or against foreign Powers.

(2.) Control of negociations with foreign Powers.

(3.) Control of foreign and certain internal affairs through the British Resident.

(4.) Privilege to move British troops through the territory of the Republic.

Taking these heads in order, we find:

(1). The incapacity of the Republic to take action

(a) With a foreign Power. *(b)* Against an outside Power, without the permission of the Suzerain, stipulated for by Sir Evelyn Wood, is reduced in the following manner:

(a) The incapacity of the Republic to take action with a Foreign Power is reduced to an obligation to submit its foreign treaties to a limited veto of the British Government; the right of disapproval to be only exercised within six months, and in case such foreign treaty should be against the interests of Great Britain or of one of Her Britannic Majesty's possessions in South Africa.

(b) The incapacity of the Republic to take action against

a foreign Power without the permission of the British Government entirely disappears.

(2). All powers of negotiation, referred to in Lord Kimberley's despatch, and in Article II. in the Convention of 1881 as reserved to the British Government, are restored to the South African Republic.

I may point out that the significance of this restoration in connection with the question of Suzerainty will be apparent on considering a Despatch of Earl Granville to Sir C. Wyke, dated the 12th May, 1881, written during the period within which the Suzerainty of 1881 was in force. The Despatch enumerates as inconsistent with the then existing Suzerainty :

(*a*) The quasi-diplomatic duties of Portuguese Consuls, under Article 19 of the treaty of 1875 between Portugal and the Republic.

(*b*). The power of the Transvaal to appoint consuls.

(*c*). The power of the Transvaal to issue exequatur to foreign consuls.

Now the consistent practice of the Republic since 1884 has been the course described by Earl Granville as inconsistent with the existence of a Suzerainty.

As the present Despatch observes (sec. 97) :

"The Government of the South African Republic have "appointed consular officials even in Great Britain, and the "British Government have granted exequatur to those officials. "But not only that ; there is a stronger fact. The British "Government have appointed consular officials in the South "African Republic, and have applied to the Government of "this Republic for the exequatur of those officials This fact "also shows clearly that the consequences of the abolition of "Suzerainty have since 1884 been accepted by the British "Government.

(3). "The British Resident appointed under the Conven- "tion of 1881, exercising large powers of control over the 'external and some of the internal affairs of the Republic dis- "appears after the Convention of 1884." In connection with the question of the Suzerainty this is important to remember, as it is expressly stated in the Convention of 1881 that the Resident is to report to the High Commissioner the manner in which the Convention is observed ; that the Resident is to have control over treaties concluded with natives, such con-

trol being subject to the approval of the High Commissioner "as representing the Suzerain;" and that all communications between the Republic and foreign Powers shall pass through the hands of the Resident.

(4). "The power of moving troops in the territory of the "Republic (Article II. of the Convention of Pretoria) is "abrogated in the usual method, by the omission of the Article "conferring the privilege."

Nothing but a limited veto on Treaties with a foreign Power remains; the rights defined by Sir Evelyn Wood, Earl Kimberley and Earl Granville as constituting a Suzerainty have disappeared.

SUBSEQUENT CONDUCT AND DECLARATIONS OF THE CONTRACTING PARTIES.

(1). As has already been shown, the deputation appointed to negociate the Convention of 1884 reported to the Volksraad that the Suzerainty had been abolished. On the faith of that assurance the Volksraad ratified the Convention.

(2). The Volksraad, when ratifying the Convention of 1884, renewed its protest against the veto; and, it has been publicly stated, only sanctioned the Convention on an unofficial assurance that the veto was not intended to be used.

(3). The existence of a Suzerainty has been publicly denied in the Volksraad during the whole period since 1884. The last of these declarations was made in August, 1897.

(4). The word Suzerainty has never appeared in any official correspondence from the British Government since 1884. This cannot be accidental, in view of the fact that Earl Granville could refer with such emphasis to the existence of the then Suzerainty in his despatch of the 12th May, 1882, above cited; and of the further fact that the denials on behalf of the Republic in the Volksraad were publicly known.

(5). The Chief Justice of the Republic, in 1885, in his work, "The Local Laws of the Republic," published in 1885, observes, "This Convention of 1881 is replaced by that of 1884."

(6). Until 1896 no suggestion was ever raised by any jurist or any other writer on the subject, or even in the English Press, that the Suzerainty was not abrogated by the

Convention of 1884. The first suggestion that such a question would be raised was made in January, 1896, after the invasion of Dr. Jameson. No legal work hitherto published in England or elsewhere can be found to maintain the proposition. To this matter a further reference will be made later on.

(7). The following extract from the present Despatch is of such importance that I quote it textually :—

"8. In connection with this question there are other "circumstances of such great importance, that they must "not be lost sight of. In his Despatch of the 25th of Feb "ruary, 1896, to His Excellency the High Commissioner, "His Honour the State President in enumerating the "reasons for his desire to discuss the question of super- "seding the Convention of London, with reference *inter* "*alia* to the violation of the territory of the South African "Republic, His Honour gives as his concluding reason: "Because the name alone and the continual arguments "on the question of Suzerainty, which, since this Conven- "tion, has ceased to exist, are being used as a pretext "to maliciously incite, more especially by means of a "libellous press, white and coloured people against the "legal authority of the Republic. At the present juncture, "these words taken in connection with the Despatch "under reply are of much greater significance than hitherto. "A few lines further down, the same Despatch from "His Honour the State President reads as follows: When "discussing the superseding of the Convention in its entirety, "Article 4 should, of course, not be left out of discussion. "What was then asserted by his Honour the State "President, namely that the Suzerainty had ceased to "exist since the Convention of London has, up to the "date of the Despatch under reply, not only never been "repudiated by Her Britannic Majesty's Government in "subsequent communications to this Government, but on "the contrary, the Government find from such subsequent "correspondence, every reason to believe that at the "time, the Secretary of State fully shared this conception. "In his telegram of the 5th March ensuing, to His "Excellency the High Commissioner, he observes, already "at the commencement:—"Her Majesty's Government "" reciprocate friendly assurance of President South "" African Republic, and believe that if he accepts in-

" " vitation to visit England, a satisfactory settlement of
" " all pending questions will be possible; at the same
" " time His Honour must not be allowed to undergo
" " fatigue and inconvenience of a journey to London,
" " without fully understanding views of Her Majesty's
" " Government." And further in the 3rd paragraph he says:
" " But President South African Republic must clearly
" " understand that Article 4 of the existing Convention
" " must form part of any such new Convention or Treaty."
" As already stated above, Article 4 is the only
" article, in which reference to Suzerainty could most
" suitably have been made and although the Secretary
" of State specially mentioned this article, he did not in
" the whole of his telegraphic despatch, nor later on,
" make any reference to the position embodied in the
" simple and clear statement of His Honour the State
" President, a position, which at the present moment,
" has become of so great importance, namely that after
" the Convention of 1884 the Suzerainty ceased to exist.

" About a year previous, Mr. Buxton, then Under
" Secretary of State for Foreign Affairs, referred in the British
" House of Commons to a statement of Mr. H. W. Smith,
" in which the latter, as Mr. Buxton said, gave an inter-
" pretation of the existing relations between England and
" the South African Republic, in which the British Govern-
" ment, as Mr. Buxton said, concurred. These words of
" Mr. Smith referred to by Mr. Buxton are the following:

" " The Convention of London made in 1884 between
" " Her Majesty and the South African Republic contains
" " no express reservation of the Queen's right of Suze-
" " rainty, and although her Majesty retains under the
" " Convention the power of refusing to sanction treaties
" " made by the South African Republic with foreign States
" " and Nations and with certain native tribes, it is a
" " cardinal principle of that settlement that the internal
" " Government and legislation of the South African
" " Republic shall not be interfered with."

" This Government is of opinion that in this respect
" it may also refer to the very important declaration
" of Sir Hercules Robinson, afterwards Lord Rosmead,
" made shortly before his demise, in an interview with
" the editor of the *Saturday Review* and published in that
" paper. Her Britannic Majesty's Government have,

"if necessary, better opportunities than this Govern-
"ment of ascertaining the perfect correctness of these
"utterances, but the statements are so fully in accor-
"dance with the grounds put forward in this Despatch
"against the existence of a Suzerainty and the words of
"Sir Hercules Robinson, being himself one of the con-
"tracting parties who signed the Convention, appear to
"this Government to be of so much weight that it has
"felt compelled to quote them.

"" People in England insist," said Mr. Harris to Lord
"Rosmead, "that the Suzerainty was implied in the 1884
"" Convention as it was explicit in that of 1881; Is this
"" true?" Lord Rosmead replied, according to the published
"report of the interview, literally as follows: "Well,
"" I ought to know as I drafted it. The meaning 'Su-
"" zerainty' was withdrawn, and the word left out pur-
"" posely. Kruger was not content with the 1881 Con-
"" vention, because of the claim to Suzerainty, and we
"" meant to withdraw the claim in 1884. What's the
"" good of claiming more power than you have got?"

"This Government further coincides with the view
"expressed by the Marquis of Salisbury, Secretary of
"State for Foreign Affairs, as clearly set forth by his
"Lordship in his telegraphic despatch to His Honour the
"State President, communicated in a telegram of His
"Excellency, the High Commissioner, of the 15th of
"February, 1896, in reply to a telegram from this Govern-
"ment of the 10th of the same month. The noble Mar-
"quis, referring to "the complete independence enjoyed
"" by the South African Republic, subject to London Con-
"" vention of 1884," states that "he accepts in all their
"" fullness the arrangements made with the South Afri-
"" can Republic by the London Convention of 1884.""

LEGAL OPINIONS.

As I have already pointed out, until 1896 no suggestion has ever been made even in the Press of the existence of a Suzerainty; and up to the present date no legal work of authority published in England or elsewhere can be cited to maintain the proposition.

As is well known, there is a complete consensus of opinion among all continental jurists who have written on the subject. They unanimously hold that no Suzerainty has existed since 1884. Among these I may specially refer to to the work of M. Arthur Desjardins, member of the Institute of France and of the Institute of International Law—"Le Transvaal et le Droit des Gens." The unanimous judgments of those lawyers in South Africa who have publicly expressed an opinion up to the present time is to the same effect. Among these I may refer to the opinion of Her Majesty's late Attorney-General for Cape Colony, the Hon. W. P. Schreiner, Q.C. I therefore consider it sufficient to cite the opinion of an eminent English authority on International Law, Professor Westlake, Q.C., LL.D., of Cambridge University, and of the Institute of International Law. Referring to the Convention of Pretoria of 1881, and the Convention of London of 1884, he comes to the conclusion that the contention now raised by Mr. Chamberlain that a Suzerainty exists is absolutely invalid, and contrary alike to the obvious meaning of the Convention and to the rules of interpretation of the Law of Nations.

"Ni dans ces lignes préliminaires, ni dans les articles qui les suivent, n'apparait le mot "suzeraineté." Cependant, certains écrivains, dans la presse anglaise, ont prétendu que, puisque les articles de la convention de Londres sont simplement substitués à ceux de la convention de Prétoria, il n'y a pas été abrogation de la garantie qui, nous l'avons vu, faisait préface aux articles de la première convention, et que la suzeraineté mentionée dans cette garantie existe donc encore. Nous ne pouvons adopter cette manière de voir car elle répose sur une interprétation trop strictement littérale, qui pourrait difficilement s'appliquer même à un document privé, et qui semble être certainement en désaccord absolu avec le style large et libéral dans lequel les documents internationaux sont généralement conçus et rédigés. L'intention parait avoir été clairement que la convention de Londres, dans son intégralité, fût substituée à la convention de Prétoria tout entière. En outre, si nous avons eu raison de conclure que la convention de Prétoria ne réservait, pour toute conséquence pratique, pas d'autre suzeraineté que celle qui put ressortir de ses articles considerés en eux-mêmes, il s'ensuit que la remplacement de ces articles par d'autres a détruit toute suzeraineté qui aurait pu y être contenue. Nous sommes ainsi amenés à étudier les articles de la convention de Londres, avec la con-

viction qu'ils constituent l'unique source des relations légales actuelles entre l'Angleterre et la République Sud-Africaine." "L'Angleterre et la République Sud-Africaine." pp. 10, 11.

EVIDENCE HITHERTO UNPUBLISHED.

I have in the preceding pages confined my attention to evidence accessible to any lawyer or other writer desirous of considering what is the fair interpretation of the relation of the Republic to the Empire as defined by International Law —evidence accessible before the publication of the recent despatch from Pretoria. I now come to evidence conclusively establishing the non-existence of a Suzerainty, and the non-persistence of a superseded preamble. This evidence, although some, and that the most important, part must have been quite as accessible to the British Colonial Office as to the Government of the South African Republic, has not been published prior to the publication of the Despatch of the Republican Government.

I may add that when two years ago I endeavoured to ascertain the legal relation of the Republic to the Empire, this newer evidence was necessarily not at my disposal—nor at all until the present year. It is, therefore, the more satisfactory to find that the conclusion at which I arrived by an independent inquiry into documents and records open to all should be confirmed in so remarkable a manner and from so unexpected a source.

As a preface let me again call attention to the published letter of the Deputation of 5th February, 1884, showing that an agreement had been come to with Lord Derby that the Suzerainty should be abolished. "In connection herewith "we would respectfully submit to your Lordship's consideration "whether it would not be possible to have the other articles of "the new Convention, namely, those referring to the abolition "of the Suzerainty and to the reduction to its legal proportions "of the debt of the Republic simultaneously drawn up and "communicated to us, in order to accelerate the complete "settlement of the matter."

Now the present Despatch of the Republican Government gives absolutely conclusive proof that the agreement to

abolish the Suzerainty was fully assented to by Lord Derby, and that he carried out his agreement. I quote textually from the Despatch :—

"But this Government now wishes further to prove in the most incontestable manner, that the statement of the Secretary of State for the Colonies in §21 of his letter under reply, viz, that the preamble of the Convention of Pretoria of 1881 has been retained—is founded on a misunderstanding.

"This Government is in possession of a declaration, made by Messrs. Kruger and Esselen, respectively member of and secretary to the Deputation of 1884, stating that it was expressly agreed upon verbally with Lord Derby that the Suzerainty was to be abolished.

"But there is more. This Government has the written evidence in its archives, that Lord Derby himself proposed that the preamble of the Convention of 1881 should be abolished. In Lord Derby's letter (already referred to) of the 15th February, 1884 (Bluebook C 3947, page 43). His Lordship sends to the Deputation a draft *of the new Convention*, which Her Majesty's Government propose, *in substitution for the Convention of Pretoria*. This draft was not printed in the Bluebook, but the original is still in the possession of this Government. A true copy of the first page is affixed as an annexure to this letter. It is so clear in itself, that it seems unnecessary to add one word thereto. Indeed, this page gives in printed form in succession first the Preamble of 1881 and then the Preamble of 1884. At the head is to be read the *Note*: "*The words "and paragraphs bracketed or printed in italics are pro- "posed to be inserted, those within a black line are proposed "to be omitted.*"

"Now, the Preamble of 1881 is "within a black line" and is thus omitted. No conclusion can be clearer.

"There is still more. The last page of the "*draft*" sent by Lord Derby, shows most distinctly that His Lordship meant to have Suzerainty abolished. A true copy of the last page also accompanies this letter as an annexure

"That page above referred to, indicates the concluding portion of the Convention of 1881, and the following words therein appearing, viz, "*subject to the suzerainty of Her Majesty, Her Heirs and Successors*," have been crossed out by Lord Derby."

The following are copies of the first and last pages of Lord Derby's Draft of the Convention of 1884.

TESTIMONY OF NEGOTIATORS.

The accessible testimony of several of the negotiators of the two Conventions is clear on the same subject.

As long ago as March, 1897—Mr. Chamberlain's Despatch is dated 16th October—Mr. Advocate Esselen, Secretary to the Deputation, informed me that Lord Derby's objects, as stated to the Deputation were the definition of boundaries, the preservation of a British trade route to the North, guarantees for the protection of natives and the retention of a Veto over foreign Treaties. The retention of the Suzerainty was not one of his objects; and he expressly agreed to abolish it.

Mr. Justice Jorissen, who made preliminary arrangements for the reception of the Deputation, stated to me personally in March, 1897, "As regards the Suzerainty, Lord Derby said: "'Let us strike out the term without saying anything about it.' I remember these words of Lord Derby so well for this reason. In Article 1 of the Convention of 1881 we had altered the words "hereafter called the Transvaal State," in the draft, to "hereinafter," as in the present text. I had objected to the term "hereafter," I reminded Lord Derby of this and he said "Well, let us in a similar way leave it out (*i.e.*, Suzerainty) without saying anything about it.'"

In Mr. Justice Jorissen's work, "Transvaal Reminiscences," p. 125, the following passage occurs:—"I was very fortunate in London. No wonder; Lord Derby was a highly cool, but absolutely honourable statesman, far above any churlish passion to torment a small country, upright enough to perceive the justice of our wishes. He acknowledged that the legal position of the Republic, from the point of view of International Law, was unfavourable and undeserved. We were perfectly independent when we were forcibly annexed, we had snatched ourselves from the tyranny sword in hand: England had been magnanimous, and had given us back nearly everything that we had had before 1877, but had unjustly retained a sort of suzerainty. The British Minister gave me distinctly to understand that he did not insist upon this latter

A CONVENTION concluded between Her Majesty the Queen, &c., &c., and the South African Republic.

NOTE.—*The words and paragraphs bracketed or printed in italics are proposed to be inserted, those within a black line are proposed to be omitted.*

Her Majesty's Commissioners for the settlement of the Transvaal Territory, duly appointed as such by a Commission passed under the Royal Sign Manual and Signet, bearing date the 5th of April, 1881, do hereby undertake and guarantee, on behalf of Her Majesty, that from and after the 8th day of August 1881, complete self-government, subject to the suzerainty of Her Majesty, Her Heir and Successors, will be accorded to the inhabitants of the Transvaal Territory, upon the following terms and conditions, and subject to the following reservations and limitations:—

Whereas the Government of the Transvaal State, through its Delegates, consisting of Stephanus Johannes Paulus Kruger, President of the said State; Stephanus Johannes Du Toit, Superintendent of Education; Nicholas Jacobus Smit, a member of the Volksraad, have represented to the Queen that the Convention signed at Pretoria on the 3rd day of August 1881, and ratified by the Volksraad of the said State on the 25th October, 1881, contains certain provisions which are inconvenient, and imposes burdens and obligations from which the said State is desirous to be relieved; and that the south-western boundaries fixed by the said Convention should be amended, with a view to promote the peace and good order of the said State, and of the countries adjacent thereto; and whereas Her Majesty the Queen, &c., &c., has been pleased to take the said representations into consideration: Now, therefore, Her Majesty has been pleased to direct, and it is hereby declared, that the following articles of a new Convention, signed on behalf of Her Majesty by Her Majesty's High Commissioner in South Africa, the Right Honourable Sir Hercules George Robert Robinson, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Governor of the Colony of the Cape of Good Hope, and on behalf of the Transvaal State (which shall herein-after be called the South African Republic) by the above-named Delegates, Stephanus Johannes Paulus Kruger, Stephanus Johannes Du Toit, Nicholas Jacobus Smit, shall, when ratified by the Volksraad of the South African Republic, be substituted for the articles embodied in the Convention of 3rd August 1881; which latter, pending such ratification, shall continue in full force and effect.

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Signed at ~~Pretoria~~ *London* this ~~3rd day of August 1881.~~

~~HERCULES ROBINSON,~~
~~President and~~ High Commissioner.
~~EVELYN WOOD, Major General,~~
~~Officer Administering the Government.~~
~~J. H. de VILLIERS.~~

We, the undersigned, Stephanus Johannes Paulus Kruger, ~~Martinus Wessel Pretorius,~~ and ~~Petrus Jacobus Joubert,~~ as ~~representatives~~ *delegates* of the ~~Transvaal Burghers,~~ *South African Republic*, do hereby agree to all the above conditions, reservations, and limitations, ~~under which self government has been restored to the inhabitants of the Transvaal Territory, subject to the suzerainty of Her Majesty, Her Heirs and Successors, and we agree to accept the Government of the said Territory, with all rights and obligations thereto appertaining, on the 8th day of August, 1881,~~ and we ~~promise and~~ undertake that this Convention shall be ratified by a ~~newly-elected~~ Volksraad of the ~~Transvaal State~~ *South African Republic* within ~~three~~ *six* months from this date.

Signed at ~~Pretoria,~~ *London*, this ~~3rd day of August 1881.~~

~~S. J. P. KRUGER.~~
~~M. W. PRETORIUS.~~
~~P. J. JOUBERT.~~

Criticism on the Position of the Transvaal Republic

Lord Derby's Draft Convention and House of Lords Speech.

Of recent criticism in the English press of the Despatch of the Republican Government, little deserves serious notice. The only two comments deserving any attention refer to the nature of the evidence as to Lord Derby's Draft expunging the obnoxious word "Suzerainty," and to a speech made by him in the House of Lords defending his policy of relinquishing the Suzerainty of 1881.

(1). Some English newspapers appear to misunderstand the nature of the document compiled by Lord Derby and now in the possession of the Government at Pretoria. They seem to think that the document is merely a printed copy of the old Convention of 1881, on which someone has, with a pen, scored erasures and brackets here and there. This is a complete error. Every erasure and bracket is printed. The scoring lines and brackets were printed in London by the British Colonial Office at the order of Lord Derby. Therefore, there must have been several copies, and it is incredible (and it has not been asserted) that copies with all the printed erasing lines cannot be found at the Colonial Office in London.

(2). Other English newspapers have cited Lord Derby's speech delivered in the House of Lords on the 17th March, 1884, as follows :—

"The word 'Suzerainty' is a very vague word, and I do "not think it is capable of any precise legal definition. What- "ever we may understand by it, I think it is not very easy to "define. But I apprehend, whether you call it a Protectorate, "or a Suzerainty, or the recognition of England as a Para- "mount Power, the fact is that a certain controlling power is "retained when the State, which exercises this Suzerainty, has "a right to veto any negotiation into which the dependent "State may enter with Foreign Powers. Whatever Suzerainty "meant in the Convention of Pretoria (1881), the condition "of things which it applied still remains ; although the word "is not actually employed, we have kept the substance. We have

'abstained from using the word because it was not capable of 'legal definition, and because it seemed to be a word which was 'likely to lead to misconception and misunderstanding."

Now, many comments may be made on this speech :—

(1). In the first place, it is to be noted that Lord Derby acknowledges in express terms that the contracting parties' abstention from using the word "Suzerainty" in the Convention of London was deliberate. "We have abstained "from using the word because it was not capable of legal "definition, and because it seemed to be a word which was "likely to lead to misconception and misunderstanding."

This has all along been the contention of the Government of Pretoria. How, then, could Lord Derby have intended the preamble of the Convention of 1881 containing the obnoxious word to remain in force, as Mr. Chamberlain now contends? Why abstain from using it in the Convention of 1884 if it was still in force by the Preamble of 1881?

If it proves nothing else, Lord Derby's speech proves conclusively that he could never have anticipated that a successor in the Colonial Office—after thirteen years of official silence—would suggest that the cancelled preamble of the Convention of Pretoria continued an underground course of inarticulate vigour.

(2). Lord Derby's statement :—"Whatever Suzerainty "meant in the Convention of Pretoria (1881), the condition of "things it implied still remains: although the word is not "actually employed, we have kept the substance"—can only be characterised as hopelessly inexact; in fact, positively untrue. In the preceding pages, it has been shown that, with one attenuated exception, every single one of the rights of the British Government constituting a Suzerainty under the Suzerainty Convention of 1881 were abrogated as the result of the non-Suzerainty Convention of 1884.

The right of moving British troops through the territory of the Republic, the right of conducting the foreign negotiations of the Republic, the right of supervising the internal native affairs of the Republic through a British Resident, the British Resident himself—all have disappeared; nothing remains but a veto, limited as to time and circumstances, on foreign treaties. On the other hand, the right of embassy and negotiation, the right of granting exequatur, the right of making war, the complete control of native affairs, all have

been restored to the Republic. It is, therefore, simply untrue to say of the Suzerainty, "We have kept the substance."

(3). The rights of the Republic and the interpretation of the Convention of London are manifestly not to be decided by an *ex parte* defence of a Minister in Parliament. It may, of course, be an interesting enquiry to students of practical politics why Lord Derby made such a palpably unsound defence. It may be freely conceded that it would be unfair to him to weigh his speech in the same scales which would be appropriate and necessary in the case of a document embodying a solemn international undertaking. It is, therefore, only just to remember that Lord Derby had been attacked as having surrendered the rights of the Empire, and having bent the knee to successful rebels in arms. Much allowance may therefore be made for a Minister in a debate, defending the policy of his Ministry accused of having been unpatriotic. He is naturally tempted to show that he has not made such a bad bargain in negotiation.

But international agreements are not to be interpreted in favour of one of the parties by parliamentary speeches made by an agent of the same party. Conventions are to be interpreted by methods familiar to international law—by their plain meaning, by the whole record of the negotiations (not a party gloss on the result), by the subsequent relations of the contracting parties. Lord Derby's speech, at the same time, leads us to consider, and throws a fresh light upon, the fact that the abolition of the Suzerainty was not express.

(4). It is not, of course, of really material importance to consider why Lord Derby in his draft of the new Convention did not include an express declaration that the Suzerainty was abolished.

It may well have been, as has been already suggested by reference to his speech, that political considerations, based on a knowledge of the unfortunate methods of party criticism in England, weighed with him. In England as in other countries, there are always to be found critics who represent any yielding to a claim of a foreign State, no matter how palpably just that claim may be, as a surrender of British rights and an injury to the prestige of the Empire. Fortunately, however, there are also citizens of the Empire who think that justice is not bounded by frontiers, and that a

mighty State best consults its own dignity and its own well-being by conceding freely what is justly claimed.

Again, English constitutional lawyers are well aware of that peculiar preference for silence as to change, for retaining as far as possible the old form—even when the change has been revolutionary—which has characterized the whole course of British history. Revolutionary change, without a word being said about it in the forms of the law, has been the normal method. To this moment, the form of a British Act of Parliament is not that of the resolution of a deliberative assembly supreme in the Empire, but of the decree of an Angevin king.

Nevertheless, a moral in favour of plain speaking is deducible. If Lord Derby had been as explicit in the completed instrument of the Convention of London as he was in his bracketed and scored recension of the Convention of Pretoria, if his words had been as clear as his printed scoring lines, he would have saved Mr. Chamberlain from the possibility of putting forward so untenable a theory as the persistence of a crossed out preamble of a superseded Convention.

MR. CHAMBERLAIN'S THEORY OF THE INTERNATIONAL STATUS OF THE REPUBLIC.

The Despatch of the Republican Government deals at considerable length with Mr. Chamberlain's theory of the international status of the Republic.

The assertions of the Colonial Secretary bearing on the topic of the International Status of the Republic may be stated as follows:

(1). The Convention of London is a declaration by Her Majesty of the conditions on which she accords self-government to the South African Republic, and is not a Treaty between two States on an equal footing.

(2). The general principles of International Law as applied to ordinary treaties between independent powers, and the rights deducible therefrom, do not apply to the Convention of London.

These statements the Despatch regards as reducible to the propositions that the independence of the Republic takes its origin in a grant by Her Majesty, and that the Republic is

not entitled to appeal to the general rights of States (such as the right of self preservation) relied on in the Despatch of the 7th May, 1897, of the Government of the Republic.

"The first of these propositions is clearly incorrect, "whether viewed as an exposition of historical fact or as a "definition of the present status of the parties to the "Convention. The second contention is absolutely without "foundation in the theory or practice of International Law."

The description of the Convention of London as an "according" of self-government to the Republic by Her Majesty, as a reasonable interpretation of the document is palpably unjustifiable. No doubt that is the mere form of the first words of the preamble of the instrument. Let us recapitulate the facts.

(1). "The present independence of the Republic derives "its formal recognition by the British Crown—in no sense, "however, its actual origin—from an international compact, "acknowledged as being equally binding on both parties."

(2). "It is obvious from a mere perusal of the "Convention that it is bi-lateral; the assent of the Republic "being as essential a condition as the agreement of Her "Majesty."

(3). The whole tenour and substance of the instrument show that it is not merely a grant from Her Majesty—a unilateral act, such as the firman of the Sultan to Egypt. Duties are assumed on both sides; by Her Majesty and by the Republic.

(4.) To the historical causes for the assumption of the form I have already referred. I will here only add that, if the mere form of a document were to decide its meaning and the rights ot those affected, then is Her Majesty a despotic monarch, who thinks it well to consult her subjects. I have already pointed out that the form of an Act of Parliament is that of a decree of an absolute King.

(5.) The British Government have always officially recognised the bi-lateral origin of the three Conventions with the Republic, by their habitual and official use of the term "Convention" as descriptive of these documents.

(6.) As an exposition of historical fact, the implied statement in the despatch under consideration, that either the original or the present independence of the Republic is traceable to a grant from the British Crown is one for historians to refute. The recognition of a right is not the origin of

a right; however much the Austinian School of English Jurisprudence would have it so.

The proposition of Mr. Chamberlain, that the general principles of International Law as applied to ordinary Treaties between independent Powers, and rights deducible therefrom, have no application to the interpretation of the Convention of London, leaves one in some uncertainty as to its precise meaning. It may be that such is the case.

(*a.*) Because the Convention of London is a grant from the Crown, which is the sole interpreter of its own grants, and that the instrument is not international. Or

(*b.*) Because the Convention is an agreement between two Powers not on an equal footing.

As regards the first meaning sufficient has been said as to the proposition—if such be meant—that the rights of the Republic rest on a grant from the British Crown, as those of Egypt on a firman from the Sultan.

As regards the second possible meaning—the language leaves a good deal to be desired in point of clearness—that the Convention is not an International instrument, and so does not fall within the scope of International Law; it is sufficient to point out that:—

(1). The British Government has repeatedly recognised the international character of the instrument by its official use of the title "Convention" in all its official publications and correspondence.

(2). "The British Government has recognised the "international character of the instrument, and its falling into "the sphere of International Law, by its agreement to refer "certain matters, namely, Article 1 of the Convention to the "arbitration of a friendly third Power."

(3). "The British Government has recognised by the "Convention of London the right of the Republic to carry on "negotiations with foreign Powers. The rights and duties "arising from these Agreements, affirmed by the British Go-"vernment under the Convention, must be referable to some "Law in case of misunderstanding. That Law can only be "the Law of Nations."

If, as seems hardly possible, it be meant that International Law has less application to the interpretation of agreements between Powers not on an equal footing than it has to those between Powers on an equal footing, it is sufficient to say that the mere fact that writers from Grotius to

the most recent have elaborated rules on both classes of agreements, shows that the one class as much as the other falls within the scope of International Law.

"If it be contended," the Despatch proceeds, "that the "rights of States on an equal footing, deducible from general "principles of International Law, are more extensive than "those similarly deducible and applicable to States on an un-"equal footing, and bound by special Treaty, such as the South "African Republic, then the answer is a denial of the truth of "the proposition."

"All essential State rights, including that of self-"protection, deducible from general principles of International "Law, are as applicable and as necessary to the case of States, "bound by such treaties as that binding on the South African "Republic, as they are to States not so bound." And the presumption, I may add, is that all rights not specifically resigned are retained; such restrictive stipulations as are contained in treaties having to be read strictly.

"On whichever of these grounds," the Despatch proceeds, "Her Britannic Majesty's Government elects to base its "contention that the Convention of London is not to be inter-"preted by general principles of International Law applicable "to Treaties between two States on an equal footing—one "answer is conclusive. It is simply that there is no other Law "to which its interpretation can be properly referred."

"The Government," the Despatch adds "have considered "it well to deal with this subject in a somewhat exhaustive "manner, because it stands in close connection with the refusal "contained in the Despatch under reply to have any difference "arising out of the Convention settled by arbitration."

One may ask, as a *reductio ad absurdum*, if the general principles of International Law have no application to the interpretation of the Convention of London, what system has application? The Law of England? The Roman Dutch Law of South Africa?

This is, indeed, the real importance of Mr. Chamberlain's contentions as to the status of the Republic. Its full significance can only be measured in connection with the refusal of Mr. Chamberlain to submit any questions under the Convention to arbitration. The Secretary for the Colonies observes:—

"The South African Republic is bound to strictly adhere "to the terms of these conditions," (of the Convention of

London) " and is not entitled to import into them any quali-
" fication based on rights of nations which are not bound by
" similar obligations arising out of similar circumstances."

But, as the Despatch of the Republican Government asks, if the Republic does not wish to " import qualifications " into the conditions, but to obtain a reasonable interpretation of them when there is legitimate ground for disagreement as to their meaning, to what law and to what tribunal is appeal to be made? To the Law of Nations and to the arbitration of friendly Powers, or to the Law of England and the arbitrium of Mr. Chamberlain?

MR. CHAMBERLAIN'S REFUSAL TO SUBMIT QUESTIONS UNDER THE CONVENTION TO ARBITRATION.

The Colonial Secretary declines " to submit questions as
" to the infringement of the Convention to the arbitration of
" any foreign State, or of the nominee of any foreign State."

His refusal is based on the ground that " Her Majesty
" holds towards the South African Republic the relation of a
" Suzerain, who has accorded to the people of that Republic
" self-government upon certain conditions, and it would be
" incompatible with that position to submit to arbitration the
" construction of the conditions on which she accorded self-
" government to the Republic."

Arguing, apparently, as to the intention of the Convention, Mr. Chamberlain further says: " One of the main
" objects which Her Majesty's Government had in view was the
" prevention of the interference of any foreign Power between
" Her Majesty and the South African Republic; and this object
" would be defeated by the course now proposed." " The clear
" intention of Her Majesty's Government at the time of the
" London Convention that questions in relation to it should not
" be submitted to arbitration is shown by the fact " that when a Draft Convention containing an arbitration clause was submitted by the delegates of the Republic to Lord Derby he declined to accept it.

As to the precedents in favour of arbitration cited by the Government of the Republic, Mr. Chamberlain states that there is no comparison between settling by arbitration the details of a boundary agreed upon in principle and the

construction of the conditions of the Convention. He also states that the arbitration of the Chief Justice of the Orange Free State – on the so-called Coolie Question —was on the construction of a law passed by the Volksraad, after a waiver by Her Majesty's Government of their rights under the Convention, and that "as a matter of fact the con- "struction of the law and not of the Convention (though it had "some bearing on the question in dispute) was the subject for "arbitration."

On the question of the existence of a Suzerainty over the Republic, and the reasons for concluding that Mr. Chamberlain is not justified in asserting the existence of a Suzerainty, the Republican Government refers to what appears in the preceding pages.

"If such Suzerainty, as this Government maintains, does "not exist, the British Government are not justified in their "refusal to submit questions in dispute to arbitration on the "ground that it would be incompatible with the existence of a "Suzerainty. But in the opinion of this Government, it is "equally clear that if a Suzerainty did exist, the Republic "would be quite as entitled as it is at present to appeal to "arbitration, as the tribunal under the Law of Nations "appropriate for the decision of a dispute as to the meaning "and extent of the rights and of the obligations of the "South African Republic towards the British Government."

"That will be evident when Earl Kimberley's definition "of the term Suzerainty—as used in the Convention of Pre- "toria, the only instrument in which it appears, is con- "sidered."

"" Entire freedom of action will be accorded to the "" Transvaal Government so far as is not inconsistent with the "" rights *expressly reserved* to the Suzerain Power. The term "" Suzerainty has been chosen as most conveniently describ- "" ing superiority over a State possessing Independent rights "" of Government, subject to reservation with reference to "" certain *specified* matters."

"A right to constitute itself sole judge of the meaning "of a bi-lateral instrument affecting two parties, to which it is "one of the parties, has not been reserved to the British "Government, either in the Convention of Pretoria of 1881 or "in that of London of 1884. Therefore the British Govern- "ment could have no such power even under a Suzerainty."

I may add that the normal and regular method in the

case of a dispute as to the meaning of a contract is, when the disputants are private persons, to refer the question to arbitration or to a Court of Law. In the case of States, an arbitral tribunal is the one obviously appropriate, and is sanctioned by the settled and the increasing practice of the last thirty years among all States of European descent. The British Government set the example, and greatly promoted the growth of international custom in favour of arbitration. It is therefore highly inconsistent that the only Government which, for the first time in modern history, is to be found setting itself up as the sole judge in its own cause should be the Government of Her Majesty.

The Republican Government call attention to Mr. Chamberlain's statement that "One of the main objects which Her "Majesty's Government had in view was the prevention of in- "terference of any Foreign Power between Her Majesty and the "South African Republic." They quite justly point out that it is not the intention of the British Government alone, as now stated by them, that would under any system of justice be regarded as the sole criterion for the construction of the Convention. It is what reasonably may be judged to be the intention of both parties, of whom the Government of the South African Republic is one.

I may add that it is highly inconvenient and anomalous that under cover of this statement of their intention, a wide and hitherto unheard of claim should be put forward—that of a right to prevent "the interference of any Foreign Power "between Her Majesty and the South African Republic." No such right was expressly reserved under the Suzerainty Convention of Pretoria, and therefore cannot be in existence. Again, it is obviously inconsistent with Lord Derby's Despatch of the 15th February, 1884.

"Your Government will be left free to govern the "country without interference, and to conduct its diplomatic "intercourse and shape its foreign policy, subject only to the "condition embodied in the fourth Article of the new draft, that "any treaty with a foreign State shall not have effect without "the approval of the Queen." If, as Mr. Chamberlain's Despatch now says: "the prevention of the interference of any "Foreign Power" was the object of the British Government, why allow the Republic to conduct its diplomatic intercourse and shape its foreign policy?

Lastly, the Republican Government protests that it is

highly invidious to describe a reference to arbitration of a disputed question under a Treaty to a friendly third Power, such as the Orange Free State or the Swiss Republic, as "interference between Her Majesty and the South African "Republic. The Government cannot regard such a "reference other than in the light of friendly assistance "invoked in the interests of permanent peace and order in "South Africa."

The Despatch does not refer to a further argument, which I may mention here. The existence of any general right, unspecified in the Convention, of rejecting arbitration as "interference by a Foreign Power" is sufficiently disproved by considering the nature of the veto reserved to the British Government under the Convention.

(1). The Veto is limited as to time. It must be exercised within six months, or it lapses.

(2). The Veto is limited by being made to depend on circumstances. It can only be exercised if the Treaty with the Foreign Power is in conflict with the interests of Great Britain or any of the British possessions in South Africa. That this limitation is real will be evident on a moment's reflection. As Professor Westlake truly observes, it would be odious to suggest that this limitation of the veto conferred on the British Government could be evaded by the British Government alleging to be contrary to British interests a Treaty which could have no influence, direct or indirect, on the interests in question. ("L'Angleterre et la République Sud-Africaine." p. 13) The good faith of the British Government, as that of the Governments of all civilised States, must be presumed.

I cite in full the very important argument which follows:

"With regard to the precedents in favour of "arbitration, set forth in its previous Despatch dated the "7th of May last, this Government has some difficulty in "appreciating the difference Her Britannic Majesty's "Government now attempts to establish between previous "instances and the present case.

"The Secretary of State for the Colonies says, that, "under the circumstances cited by him, there can be no comparison between the fixing by arbitration of the "details of a boundary and the construction by arbitration of the meaning of the Convention itself.

"With regard to this contention this Government

"desires to point out that the fixing of the Western "Boundary was, in the opinion of both Governments, one "of the principal questions involved.

"In any case the arbitration such as was selected "was arbitration by a foreign Power, against which the "Secretary of State now wishes to base a claim for "exclusion.

"The contention that the actual decision of the "Chief Justice of the Orange Free State in the so-called "Coolie-question was not an award as to the construc- "tion of certain clauses of the Convention (as well as "the interpretation of certain Laws of the South African "Republic) is, in the opinion of the Government clearly "refuted by the text of the award.

"To facilitate matters, this Government wishes to "quote textually as far as necessary. The award states:

"" Whereas certain questions have arisen between "" the Government of the South African Republic and "" the Government of Her Majesty the Queen of the "" United Kingdom of Great Britain and Ireland, with "" reference to the fourteenth article of a certain Con- "" vention entered into in London, on the 23rd day of "" February, 1884, by the representatives of the said "" Governments, on behalf of the said Governments "" respectively, with reference to Law No. 3 of 1885 "" enacted and in the year 1886 amended by the Volks- "" raad of the South African Republic, and with reference "" to certain Despatches thereunto relating."

"" And whereas the said Governments have agreed "" to submit the said questions to arbitration."

"This Government is of opinion that from this it is "abundantly clear that the Convention of London as well "as the interpretation thereof, formed one of the subjects "submitted to arbitration by the British Government.

"Further reference to the award will show that the "British Government relied entirely on its own interpreta- "tion of art. 14 of the Convention of London and that "the arbitrator based his award expressly on that inter- "pretation of the Convention.

"But there is more: When Her Britannic Majesty's "Government at the time proposed arbitration, and this "Government consented thereto as being according to "their opinion an exceedingly fair measure, there were

"certain details to be settled before the arbitration could "be proceeded with.

"One of these consisted in the writing of a letter by "the two Governments to His Honour the State President "and to the Chief Justice of the Orange Free State, a letter "which His Excellency the High Commissioner proposed "to be identical.

"His Excellency sent a telegram on the 24th of "March 1894 to His Honour the State President of the "South African Republic as follows :—

"" I think however that some communication should "" be made to the State President and Chief Justice of "" the Orange Free State. Would your Honour wish me "" to do so or would you prefer that the reqnest should "" come from both parties; in case you prefer the latter "" course I suggest the following identical letter from "" your Honour and myself to His Honour the State "" President of the Orange Free State."

"" (Begins) Sir, I have the honour to acquaint your "" Honour that as a difference of opinion has arisen "" between Her Majesty's Government and the Govern- "" ment of the South African Republic as to the true "" interpretation of the treaty rights of British Asiatic "" subjects in the South African Republic it has been "" proposed to refer the question to arbitration, subject "" to the approval of the Volksraad of the South African "" Republic and both parties having confidence in your "" Honour's Government and the High Court of the "" Orange Free State have agreed to ask for the services "" of His Honour the Chief Justice as arbitrator."""

"The contents of the draft letter were not thought "to be sufficiently comprehensive and were therefore "altered with the approval of His Excellency, the High "Commissioner. But of course this does not affect the "views of Her Britannic Majesty's Government expressed at "the time so clearly;—"that a difference of opinion had arisen "as to the true interpretation of treaty rights" in other "words as to the interpretation of the conditions of the "Convention of London.

"In connection with this clear statement of His "Excellency the High Commissioner that a difference of "opinion had arisen as to the true interpretation "of treaty rights, a difference which the Secretary of State

"himself in his letter to His Excellency the High "Commissioner of September 4th, 1895, characterises "as an international question in dispute, between the "two Governments,'" special attention is due to a letter "of Her Britannic Majesty's Agent, dated the 19th of "February 1894, the last received about this matter by "this Government from Her Britannic Majesty's Govern- "ment before the arbitration took place.

"In that letter he says, *inter alia*, that he was "directed to inform this Government: "that the treaty "" rights of British Indian subjects rest on the London "" Convention of 1884, except in so far as Her Majesty's "" Government, have, for sanitary reasons, consented to a "" departure from the terms of that Convention." "And further:—"That as the treaty obligations of the "" Government of the South African Republic must "" be construed by the Convention and the limited "" departure from the Convention assented to by "" Her Majesty's Government, any departure in "" excess of the limit assented to by Her "" Majesty's Government would be a breach of treaty "" obligations."

"These words, written by direction of Her Britannic "Majesty's Government, are clearly of great signifiance "and incontestably show the difference of opinion held "by Her Britannic Majesty's Government then and now.

"In view of the foregoing this Government is unable "to arrive at any other conclusion than that these two "precedents for arbitration under the Convention of Lon- "don, on which this Government base their request to "submit the questions at present in dispute to arbitra- "tion, are distinctly applicable.

"But its request is not merely justified by these pre- "cedents; the South African Republic also wishes to "appeal to the growing tendency among all States of "European descent, viz: the tendency, especially in cases "of the construction of a treaty, of following the peaceful "course of arbitration, which would be highly appreciated "by this Government.

"After all that has been submitted, the right of the "South African Republic—of a weak State as against a "powerful one—to request an independent pronounce- "ment on the extent of its rights and obligations as

'against the Government of Her Britannic Majesty, cannot be gainsaid under International Law, and this Government, whilst repeating the exposition of its motives, views and arguments fully set forth in its despatch of the 7th of May last, and having regard to what the Right Honourable the Secretary of State himself stated, viz.: "that in cases of that nature, arbitration was the best way among civilized nations," has again decided to courteously approach Her Britannic Majesty's Government with the request that the principle of arbitration may be acceded to."

With this vindication of the authority of the Law of Nations and of the right of minor States, not to equality, but to justice, the Despatch of the Republican Government concludes. I propose to offer some considerations on the policy of arbitration on matters in dispute between the Republic and the Empire, but I shall first consider the various theories of the status of the Republic,—other than Mr. Chamberlain's theory of a Suzerainty—already sufficiently refuted—which have been put forward by various writers.

THE RELATION OF THE REPUBLIC TO THE EMPIRE.

Though academic precision of expression is not always of great moment in the definingof international relations—nothing grievous could occur were San Marino described as a vassal State or Kniphausen as one protected—yet, in regard to the South African Republic, there are circumstances of political moment which, in the interest of peace and order in South Africa, render it desirable that words should be used that fit the facts. An erroneous theory of political relations sometimes entails consequences of more than academic interest. As Burke in vain protested, it was a certain conception of a right inherent in the British Parliament to tax the American Colonies, and an equally vivid conviction of a right not to be taxed except by themselves on the side of the American Colonies, that led to the great secession of the colonies of the English speaking people. Suzerainty, as an academic phrase, may be of interest only to students of the history of the Law of Nations. Suzerainty, asserted as a right by a British Colonial Secretary over a Boer

Republic, may be the beginning of a series of complications between the Dutch and British in South Africa, the more serious from the uncertainty in the public mind of the extent of the rights claimable under shelter of a phrase which, being unknown, looms huge in the mist.

It may be of service, therefore, to consider the various terms in International Law suggested as applicable, or conceivably appropriate, to the present relation between the Republic and the Empire.

With Mr. Chamberlain's theory—that the present relation may be described as one of Suzerainty on the part of the Empire and Vassalage on that of the Republic—I have already dealt at sufficient length. Only one remark I may add. Some who have welcomed Mr. Chamberlain's theory have (perhaps with indiscreet zeal) rested their advocacy on the proposition that the mere assertion of a claim by a great Empire to exercise a Suzerainty over a minor Republic, backed by the consciousness of the overwhelming strength of the Empire to maintain by arms the validity of any pretension it elects to make, is in itself an international fact concerning which it boots not to argue. I think it enough to say that this manner of viewing international relations would reduce the Law of Nations to a vain thing; that the Empire has never repudiated its duties under that law; and that arguments of the kind are not those with which writers on the Law of Nations have to deal – except to denounce them as lawless and to repudiate their ultimate advantage to the community of States of the Family of Nations.

The second description of the relation of the Republic to the Empire and to the world of States to which I may refer is that given by Dr. T. J. Lawrence ("The Principles of International Law." 1897). Dr. Lawrence holds that the Republic is a "Part Sovereign State." The citations already given from Phillimore, Twiss, Heffter, Wheaton, and Lawrence (Commentary on Wheaton), sufficiently indicate their objections to the use of a term of "admitted impropriety." The objections which I would add are:—First, That the term is incapable of conveying what proportion of sovereign rights is given to or withheld from the "Part-Sovereign" State. The diminution by treaty obligation may be so small as not to be worth consideration (such as a right of navigation through a river), or may be so large as to

almost absorb all the power of the State. Secondly—and this is more important—the phrase seems to me to be framed in an attempt at absolutely unattainable precision of expression. "Sovereignty" is, after all, a term used for convenience of expression, in order to denote such powers of independence and free action as are wide enough to entitle us to class a community in that section of communities whose free volition is a matter to be reckoned with in international action. Absolute ideal freedom, in the nature of things, cannot be possessed by any State of the Family of Nations, any more than by any man. A man is called free if, as a practical matter of experience, his liberty, however restrained by criminal law, by contract, or by economic or physical conditions, is wide enough to enable us to so describe him in comparison with other persons not in the condition of such freedom. Now, a State is called Sovereign where a man is called free. The term "Part-Sovereign" appears to be as objectionable as would be the term "part-free." Lastly: the application of the term is beset with practical difficulties Naples was vassal of the Pope until 1818; Naples was always considered a Sovereign State. The liberty of Belgium in international action is restrained by a treaty binding her to neutrality in wars between other States; Belgium is admittedly a Sovereign Power. The veto conferred on the British Empire over the foreign treaties of the South African Republic—restraining the full exercise of its liberty in relations of peace towards Foreign Powers—can no more deprive the Republic of its right to be described as a Sovereign State than the treaty obligation of Belgium—restraining the exercise of its liberty in relations of war towards Foreign Powers—deprives Belgium of its title to Sovereignty.

The term suggested by Professor Westlake ("L'Angleterre et la République Sud-Africaine," 1896, p. 13), is that of Protectorate. He holds that the Republic is a "Mi-souverain" State protected by the Empire, and entitled to demand military aid from the Imperial forces. Perhaps it will be sufficient to point out that both parties to the three Conventions—of Sand River, of Pretoria, and of London—the Governments of the Republic and the Empire, both decline to adopt this interpretation of their relations; and the Republic in especial emphatically repudiates it. Besides, as M. Arthur Desjardins reminds us, ("Le Transvaal et le Droit des Gens," p. 33), it would entail the startling anomaly

of a protected Power—the Republic—being acknowledged by the protecting Power—the Empire—as itself the protector of a dependent community. The Convention of the 10th December, 1894 (Article 2) between the Empire and the Republic recognises the Republic as protector of Swazieland.

German writers, including Professor Dove of Gottingen, are stated in the press to have described the Republic as a Sovereign State "subject to a State servitude." This phrase, borrowed from the Roman Law, seems certainly more descriptive of the facts than those already cited. Nevertheless it does not appear to be quite satisfactory. A very minor objection would be that the term "servitude" in this sense (an "easement" in the technical language of English Law), is hardly "understanded of the English," and is certainly not used in ordinary English speech except as implying slavery. Still, most of terminology of International Law is of Roman origin, and this objection would not be conclusive. But a serious objection is that already raised against the use of the term "Part-Sovereign." It does not explain the extent of the "servitude;" it may be a mere right of river passage; it may be a stipulation which hampers the whole external and internal action of the State, and deprives it altogether of that free volition in the international relations of States which entitles a State to the designation of Sovereign.

As I have said, academic precision of expression in the ruder jurisprudence of nations is not always of moment. I may add that it is rarely attainable. But if, notwithstanding the warning—"Omnis definitio in jure periculosa"—it be necessary to select some term as closely as possible descriptive of the relation of the Republic to the Empire, I would prefer to adopt the nomenclature of Sir Robert Phillimore in dealing with the status of Belgium. For the reasons I have mentioned, the condition of the Republic and the extent of the restraint on its liberty of international action appear to me to be closely paralleled by the case of the Kingdom. In war, the hands of Belgium are in one respect restrained: in peace, to a defined extent, the hands of the South African Republic. As Belgium is a Sovereign State, so is the South African Republic: both are to be placed under a special category—as Sovereign States under an anomalous pact.

(NOTE).—I may remind English lawyers that the High Court of Justice of England has (and that since Mr. Chamberlain's theory of Suzerainty has been given to the world)

decided that in its judgment, the South African Republic is a Sovereign State. *The South African Republic versus La Compagnie Franco Belge du Chemin de fer du Nord de la République Sud Africaine.* High Court of Justice ; Chancery Division, before Mr. Justice North. *Times* Law Reports, 22nd April 1898.)

ARBITRATION AS A POLICY.

I am unwilling to leave the subject of the relation of the Republic to the Empire without—if only for a moment—turning from the more exclusively legal aspect of the question at issue between the two Governments, and considering the policy of arbitration, to which the Republic appeals, from a standpoint with which citizens of all States of the Family of Nations can sympathise. The real test of a given policy in South Africa must be whether it conduces to the ultimate prosperity and the harmonious blending of the various sections of the European race in the sub-continent. This, indeed, is the test in a wider field of the utility of the whole body of the Law of Nations. Now, that a refusal by the Imperial Government to refer to arbitration questions in dispute as to the effect of obligations imposed on the Republic by the Convention of London will have a most injurious effect a very little amount of reflection will show.

Rightly or wrongly, as the result of a series of historic causes, the Boer founders of the two Republics of South Africa set great store on their independence. Their successors in the government of the Republics, rightly or wrongly, as it may be, set equal store on that independence. This is a fact of the situation which every statesman is bound to take into account ; and no amount of argument as to the greater benefits which, from the standpoint of some Englishmen, would accrue to the inhabitants from subjection to or incorporation in the Empire can alter this basic fact. To try and convince a Boer people to the contrary would be as hopeful an enterprise as to endeavour to persuade the people of Alsace-Lorraine how much better off they would be if they accepted the domination of Germany, instead of clinging to the hope of their reunion to the *mère-patrie* of France.

The refusal to refer the interpretation of the Convention of London to the arbitral tribunals of the Law of Nations is simply equivalent to a claim to make the Secretary for the Colonies for the time being—hardly even, though this would make no difference, the British Cabinet—the sole arbiter of the duties of the Republic under the Convention. An exclusive privilege of one party to a Convention, of interpreting the obligations imposed by the Convention, is a thing unheard of in the relations of States, and is also in conflict with the past practice, not to say the settled policy of the British Government. Such an unprecedented claim, coinciding with such a reversal of a historic policy, must inevitably be regarded by the burghers of the Republic, by the burghers of the Orange Free State, and by their sympathisers and kinsmen through the British Colonies in South Africa, as an impeachment of the independence of the South African Republic solemnly guaranteed by the Government of the Empire in 1852, in 1881 and in 1884.

"Who interprets, enacts." An independence, subject to the decision of all questions of the treaty obligations of the Republic by the arbitrary will of the British Secretary for the Colonies for the time being, must necessarily be a mere form of words. Of the Laws of England, nine tenths have been enacted by the judges of the land—without consulting King or Parliament—under cover of their right to interpret, and notwithstanding their repeated denials of possessing any power but that of explaining existing Law.

These observations are of course made on the assumption that the promotion of peace in South Africa is one of the objects which commend themselves to British Statesmen. If the Colonial Secretary wishes to bring not peace but a sword; to reverse the magnanimous policy of the retrocession of 1881, effected by a Cabinet of which he was a member; if he desires to exert the might of the Empire to conquer an unwilling population and to overthrow a State whose independence has solemnly been guaranteed, no doubt arguments of this kind are of little avail. But in that case it will be well to count the cost. The good name of the Empire cannot be strengthened in the eyes of the civilised world, and the fire of race hatred between Boer and Briton in South Africa, set aflame anew, will check the hand of every British administrator for generations to come.

The result of some travel and observation in South

Africa for a period of two years has convinced me that such are the realities of the situation. I hope to set forth my conclusions at greater length under a different form and to show that whatever mistakes the Republics have made, and may make—and I do not say that they have made none—they have played a part of enormous utility to the white man in the sub-continent. I do not here refer to their work as pioneers, though that is great and obvious.

Led to the consideration of the race limits of that custom of the European race which is the Law of Nations, by the trend of recent events and of juristic discussion, within the last quarter of the century, a student of International Law must see here in South Africa as elsewhere, that ever increasing with the widening bounds of our dominion two dangers of vast magnitude confront us in the sphere of merely material well-being. The one is the danger of a mistaken attitude towards and a mistaken treatment of the inferior races now, and for a long time past, falling under our sway. The other is the danger, unhappily too often realised in the experience of the English-speaking world, of subjecting the natural sources of a country's wealth—agricultural, mineral, manufacturing, transport—to the control of an ever-narrowing ring of cosmopolitan capitalism—the terror invoked for the warning of his people almost with his last breath by President Lincoln. On these two crucial issues the Boer Republics of South Africa have been, in the main, right; the British Empire in South Africa, in the main, wrong.

It may indeed be said that herein the founders and governors of the Republics built and are building more wisely than they know. That may well be, and in any case I do not see the need or utility of arguing the question; though from personal experience of the men at the helm, I am not without grounds for thinking that some at least are not unconscious now of the mighty issues at stake.

However this may be, on conclusions as to the practical policy to be adopted by the British Government towards the Republics it is reassuring to find unanimity among most thoughtful observers. Let me give the conclusion of so acute and experienced an observer of men and affairs as Professor Bryce—one, too, who is no friend of the policy of the present Government of Pretoria:—

"The irritation of the Dutch element in Cape Colony both in 1881 and again in 1896 was due to an impression

"that their Transvaal kinsfolk were being unfairly dealt with. "Should that impression recur, its influence both on the "Dutch of Cape Colony and on the people of the Free "State, whose geographical position makes their attitude "specially important, would be unfortunate. The history of "South Africa, like that of other countries nearer home, "warns us how dangerous a factor sentiment and espe- "cially the sense of resentment at injustice, may become in "politics, and how it may continue to work mischief even when "the injustice has been repented of. It is, therefore, not only "considerations of magnanimity and equity, but also considera- "tions of policy, that recommend to the English in South "Africa and to the British Government an attitude of patience, "prudence and strict adherence to legal rights. They are "entitled to require the same adherence from the Transvaal "Government, but it is equally their interest not to depart from "it themselves, and to avoid even the least appearance of "aggression. The mistakes of the past are not irremediable; "tact, coolness and patience—above all, patience—must "gradually bring about the reconcilement and fusion of the "two races to which, it can scarcely be doubted, South Africa "will at last attain." ("Impressions of South Africa" "1897, p. 597).

Let me repeat here the weighty words of the great Statesman who has just passed away, which might well be written in letters of gold for the guidance of foreign and colonial Ministers:—

"What you really want is not merely the improve- "ment of the machinery by which the central autho- "rity controls its extraneous agents; it is the improve- "ment of the central authority itself—the formation of just "habits of thought; it is that we should be more modest and "less arrogant; it is that we should uniformly regard every "other State and every other people as standing on the same "level of right as ourselves. It is that in the prosecution of "our interest we shall not be so carried away by zeal as to "allow it to make us forgetful of the equal claims and equal "rights of others. That is a very grave question indeed, and "one on which I am bound to say I believe the central "authority is quite as much in need of self discipline and "self restraint as its extraneous agents." (Mr. Gladstone in the discussion on Mr. Richard's motion in the House of

Commons, 29th April 1881. Lorimer : " Institutes of the Law of Nations," I. 268.)

A perception of the unity of the white man south of the Zambesi is more likely to be promoted by a policy on the part of the British Government of scrupulous regard for International Law and for the guaranteed rights of the Republics, than by any assertion of Imperial autocracy. In this growing perception, aided by many contributing causes, the true solution of the present difficulties and dissentions in South Africa is to be sought. Chief among these contributing causes must be the pressure of the barbarian population, native and Asiatic. The Zulu and the Coolie have no doubt at all as to the real unity of race underlying the surface dissensions of Boer and Briton. In South Africa, as everywhere on the advancing frontier of the white man, that perception is deepening and spreading among the European race. No one who impartially studies the history of South Africa can justly say that the Boer's desire for self government and distrust of Government directed from London is without warrant. Vacillation, rash advance, precipitate retreat, a mistaken though quite well intentioned policy in regard to the savage native populations, misrepresentation of the Boer and his ways, have characterised British rule in South Africa until barely a generation ago. An invasion for which International Law has no words but those of condemnation, two years ago set alight anew the smouldering fires of race hatred, and intensified the Boer's jealousy of his independence by the proof that that his independence has enemies on the British side who have not scrupled to resort to force—force employed without challenge or warning. These effects of the past cannot be ignored ; nor can they be wiped out by simply asking the Boer to forget. Nothing but patience, the effects of intercourse, of commerce, of intermarriage, the spread of enlightened ideas, the slow touch of time, can obliterate and annul this heritage of the past.

If, in the opinion of the Imperial Government, there be evidence in the legislation of the Republic of the results of the distrust inspired by the too well grounded experience of the Boer, they may be assured that a scrupulous regard for the guaranteed liberty of the Republic and the frank acknowledgement of its right to appeal to the arbitral tribunals of the Law of Nations will prove

one of the best methods of restoring mutual confidence. As Lord Carnarvon experienced, when a quarter of a century ago he brought forward his scheme for the confederation of all the States and Colonies, it is useless to endeavour to hasten events in South Africa.

And, were one to consider alone the prosperity of the Empire in South Africa, it would not be difficult to see that a friendly though independent Republic is much more likely to be a useful ally in the victories of peace, no less than in those of war, than a Republic estranged by assertions of autocratic power, or rendered distrustful by armed attacks on its independence—not to say than a conquered province, sullen with discontent. Goodwill towards the Imperial Government must be a plant of slow growth; but nothing can speed its progress more than a scrupulous regard for law and right on the part of the Imperial Power. Towards this growth of goodwill all things that tend towards the fusion of the white races in South Africa must contribute: intercourse, commerce, intermarriage, education, the pressure of the non-European. And, not least of all, the deepening impression among all thoughtful South Africans of the security, the freedom from the militarism which strangles the European Continent, the ordered peace of all Europeans in South Africa, flowing directly from the Sea Power of the Empire on the African coast.

approval by Her Britannic Majesty would seem rather to sanction the increasing of facilities for closer union between the Republics.

V. It now remains to consider the principles of the Law of Nations, apart from express treaty stipulation, relevant to this question.

It is an undoubted principle of International Law that every State has absolute authority to define the conditions under which political rights, including rights of citizenship, may be granted to foreign immigrants. All authorities who have referred to the subject are agreed on this point; so much so, that to this universal agreement on a proposition regarded as self-evident is attributable the fact that some authorities state it only by implication. Among writers in English I may cite Hall, International Law p. 43; Field, International Code, s. 328; Woolsey, International Law, s. 66. With other writers, such as Phillimore, it is merged in the wider assertion of the absolute right of the State not merely to regulate the condition of foreigners but to exclude them absolutely. Not a single authority or precedent can be cited for the proposition that foreign immigrants, or their Governments on their behalf, are entitled under the general Law of Nations to claim political privileges.

Any such claim, therefore, must be based on treaty stipulation, and, as I have already stated, I do not see how it can be supported by the terms of Articles XIII, and XIV. of the Convention of London.

VI. These considerations are strengthened by reflection on the fact that such controversies as are to be found in the history of the Law of Nations turn upon the assertion, notably by the British Government, of a precisely opposite principle—the doctrine of indissoluble allegiance. It is, in fact, without precedent on the part of any State, and specially contrary to British precedents, that a Government should demand as a legal right on behalf of its citizens settled in a foreign country that they should be facilitated in the acquisition of a new allegiance and in divesting themselves of their allegiance to their original Government. More especially would this seem to be the case with the British Government, which until 1870—the date of the passing of the Naturalisation Act—maintained the doctrine of indissoluble allegiance in full vigour; as its controversies with the United States of America and with the South African Republic at its foundation sufficiently attest.

VII. Whether, if at all, Her Britannic Majesty's Government will raise such a contention as a matter of legal right (as apart from a suggestion of policy as to the franchise, such as has already been tendered) is, of course, a question of future fact; but, for all the reasons above noted, I am of opinion that such a claim of legal right would be held invalid by any tribunal to which it might be submitted.

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29th. May, 1897.