The Sun.

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The Question of Mutual Consent in Abrogation

A fact generally overlooked in discussions of the validity of the old Clayton-Bulwer Treaty is here stated again for the benefit of all concerned.

No wonder was the total effacement of that arrangement that if it cannot be actually been constructed under the conditions then contemplated, that is by the joint betrayment of British and American social. It would have been to the power of either Government to withdraw from the joint protectorate and, leaving the guarantee of neutrality upon a property on which to be always available.

It would not then have required mutual consent for the termination of the neutrality compact. Great Britain could have withdrawn, under the terms of the very treaty, without asking our formal permission or even our tacit acquiescence. Our protest against her withdrawal would have been without legal force, for it was thus expressly provided in the bond, in Article V:

"Nevertheless, the Governments of the United States and Great Britain, in assuming this position in the construction of the canal, and in declaring its neutrality and security when completed, always understand that this protection and guarantee are granted conditionally, and may be withdrawn by both Governments, or either Government, if both Governments, or either Government, should deem that the persons or company undertaking or managing the same adopt such regulations concerning the traffic thereupon as are contrary to the spirit and intention of this convention, either by making unfair discriminations in favor of the commerce of one of the contracting parties over the commerce of the other or by imposing oppressive exactions or unreasonable tolls upon the passengers, vessels, goods, wares, merchandise, or other articles. Neither party, however, shall withdraw the aforesaid protection and guarantee without first giving six months' notice to the other."

Therefore, the compact to guarantee jointly the neutrality of the canal, "so that the said canal may be forever open and free," was not eternal. It was distinctly made conditional and terminable on six months' notice in case either party—not both parties jointly but either party independently—might entertain or profess dissatisfaction with the traffic regulations or the tolls.

We are of the opinion that if Article V. of the old Clayton-Bulwer Treaty is studied candidly on both sides of the Atlantic, and with more attention than it seems to have engaged heretofore either here or in England, it will serve to illuminate the present British position in both its legal and its moral aspects.

If Article V. had made the joint protection and joint guarantee terminable only by mutual consent, our British friends might now with some reason insist that the whole convention was intended to stand until both parties agreed to its abrogation.

But the treaty itself provided for the termination of the partnership and the neutrality guarantee at the pleasure of either party on six months' notice.

To maintain that a convention framed fifty years ago under conditions now obsolete, and with expectations that have never been realized, and even in view of those conditions and expectations practically terminable at short notice by either Government, has now by some mysterious alchemy acquired the sanctity of an everlasting obligation dissoluble only by mutual consent, is a proposition that does not appeal to common sense.

The Revival of Gambling

Members of the National Society of New England Women, after enjoying a competitive game of whist for prizes at DELMONICO'S, on Monday afternoon, farther diverted themselves by criticising the sermon of the Rev. Dr. HUNTINGTON, of the day before, on the spread of the passion of gambling because of the present fashionable vogue of bridge whist. As they had played only the regular game of whist they agreed, however, that "the sermon didn't point at us."

We shall not discuss that matter with the New England ladies, nor even venture logical dissent from the dictum of one of them that "a charitable reason for the game removes it from the realm of gambling;" but as to the specific point made by Dr. HUNTINGTON concerning the prevalence of straight-out gambling as a fashionable pastime in which women of social distinction are now indulging, the facts sustaining him are too many and too patent to be gainsaid by the New England ladies. In spite of the assertion by one of the governors of this association that she "had never known a lady to gamble," unless playing for prizes is gambling, the practice actually is now frequent among the women of fashion of both this country and England.

In former times gambling among such women was usual, as every reader of history knows, and the present vogue of the amusement is only a revival. During this winter the devotion to bridge whist has given it a greater stimulus than it has had for a century; and its excitement, its appeal to chance, is so peculiarly seductive to the feminine nature that Dr. HUNTINGTON had good reason for lamenting the fashionable revival.

The gaming table surrounded by the allurement of feminine charm is also especially dangerous to men. The most pernicious of public gambling houses have always been those in which feminine enticement was used to enhance the temptation of the game, and women, no matter how pure and reputable they may be, must act as such tempters of men whenever they set up the game in their houses and invite young men, more especially, to take part in them. That is indisputable, and Dr. HUNTINGTON was right in his denunciation of such fashionable gambling.

The consequences as suggested by him were not at all exaggerated. Nor is it doubtful that if private gambling continues to receive the attention of fashionable ladies it will grow rapidly into a serious evil. Promise to-day putting aside and doing women hold. The sad influence of the third game of the new century gambler will be magnified correspondingly. To-morrow a more manly element and when the foundation is laid in the social government is there to be no social government to prevent putting some middle of affairs. The degree of such coverage of issues. The neighborhood affected by gambling has reached proportions of alarming importance. Let the

Hanley and the Emperor

Discussing in the Old Bailey Criminal Court on March eighteenth last Dr. Thomas Carapiet Hanley, Prescott of Yale, recently sued this amazing property.

[illegible]

Such is the astonishing statement to Dr. Hanley. He refused to transfer the profits, believing and was sued for large damages.

[illegible] the plaintiff and witnesses. Dr. Hanley admitted that he had been sued, but he had been tried and acquitted. It has been tried at all. Surely Dr. Hanley cannot have lost faith in the prescription.

We shall have an Emperor in twenty-five years. In a sentence so confident, so exact and so severely mathematical that it must have come or should have come from another distinguished New Haven prophet and moralist, Lord Jeffreys.

According to the history and traditions of Yale for two hundred years no President of that institution has been guilty of judgment or loose of tongue, or subject to a charge of the intellect and fits of hysteria.

We should hate to have to believe that the present President of Yale has voluntarily gone into the padded cell with Jorge JACOB LENTZ and GAMALIEL BRADFORD.

The Police Power.

Some superficial writers in various journals have advanced the theory that the proposed transfer of the control of our local police to a State official at Albany would be constitutional because "the police power is vested in the State," and that, as the greater embraces the less, whatever police power the city of New York enjoys must be subject to the State as the paramount authority. This argument is based on a misconception of the theory of our republican form of government, and upon a failure to comprehend the nature of our Constitution.

What do these people mean when they say, "The police power is vested in the State?" In their minds do they picture the State as a sort of omnipotent being, or as a hydra-headed monster composed of all the State officials bound together, or do they think the State is the Executive?

The State is composed of three great departments of government—the Legislative, the Executive, and the Judicial. The Legislative power is vested in the Senate and the Assembly, and the Executive power is vested in the Governor. But all these departments and the rights and powers of each of them, are limited and controlled by the written Constitution, or the organic instrument of government framed by the people of the whole State in their sovereign capacity.

The Legislature has almost absolute law-making power, except in so far as it is limited by the Constitution or except when it seeks to make laws which are repugnant to reason or to justice. Judge COMSTOCK, in the Court of Appeals in an early case, said:

"High authority, certainly, has been cited to show that laws, which although not specially prohibited by written Constitutions, are repugnant to reason and subvert clearly vested rights, are invalid and must be declared by the judiciary."

And he cited with approval the language of Judge CHASE, who said:

"I cannot subscribe to the omnipotence of a State Legislature, or that it is absolute and without control although its authority should not be restrained by the Constitution of fundamental law of the State."

And Judge COMSTOCK also cited these words of Chief Justice MARSHALL:

"It may be doubted whether the nature of society and of government does not prescribe some limits to the legislative power."

And the Court of Appeals in this same case held that aside from the special limitations of the Constitution, the Legislature cannot exercise powers which are in their nature essentially judicial or executive.

Three great powers of government, the right of eminent domain or of acquiring private property for public use, the power of taxation, and the police power, are exercised by the Legislature, but in their exercise the Senate and Assembly cannot, for one moment, violate the Constitution of the State.

The police power of the State vested in the Legislature has been variously defined. In Massachusetts it has been called the power vested in the Legislature to make such laws as they shall judge to be for the good of the Commonwealth and its subjects. In this State, in 1889, the Court of Appeals defined the police power as "that authority which resides in every sovereignty to pass all laws for the internal regulation and government of the State, necessary for the public welfare." A great Constitutional writer says that it embraces the whole system of internal regulation by which the State seeks not only to preserve the public order and to prevent offences against itself, but also to establish for the intercourse of citizens with citizens those rules of good manners and good neighborhood which are calculated to prevent the conflict of rights.

All laws regulating the conduct of our citizens, all enactments providing for the tranquillity of our lives and affecting health or security, either from crime or accident or fire, are all parts of police regulation in its general sense, and, of course, the making of such laws or statutes is for the Legislature.

But in regard to every proposition that comes before either house of the Legislature, it is the duty of the lawmakers to ask, First: "Is there danger threatened or is there need of the new law?" Secondly: "Is the regulation just and reasonable?" and Thirdly, and this is the most vital question: "Does the regulation conflict with Constitutional rights?" And if it violates the Constitution, the law will be invalid whenever it shall come before that other great department of State, the Bench.

There is no question of the power of the Legislature to make laws which are in their nature police regulations as affecting life, security or health. The question now is entirely different. It is this: Is there in the State, in the State Constitution, a limitation on the power of the Legislature to make any law which violates the rights of one citizen? Is an law which violates the rights of one citizen, any law which takes away from the control of one local police system in the administration of that system, and transfers it to the Legislature?

The question is not, What can the Legislature do in relation to the police system? The question is, Can the Legislature, by a law, take away from a single citizen his rights? Is there any provision in the Constitution which prevents the exercise of such power? Is there any provision which prevents the Legislature from taking the control of the police from the officers in charge of the police