its reception by its critics recalls the story of Columbus and the egg, or to adopt a reference more germane to international relations, it recalls a famous remark of Lord Palmerston:

> It is a true saying, and has often been repeated, that a very moderate share of human wisdom is sufficient for the guidance of human affairs. But there is another truth, equally indisputable, which is, that a man who aspires to govern mankind ought to bring to the task, generous sympathies, and noble and elevated thoughts.[16]

WILLIAM C. DENNIS.

THE CHICAGO SANITARY DISTRICT CASE

The right of the Chicago Sanitary District to divert the waters of the Great Lakes into a sanitary canal for sewage disposal purposes is being vigorously contested, not only by the Canadian Government but by several States of the Union which are affected by the diversion.

In January, 1925, the Supreme Court of the United States affirmed a decree of the District Court, enjoining the Sanitary District from diverting water from Lake Michigan in excess of 4167 cubic feet per second, without prejudice, however, to any diversion permit that might be issued by the Secretary of War in accordance with the law. (Sanitary District of Chicago *v.* U. S., 266 U. S. 405.) On March 3, 1925, the Secretary of War issued a permit to the Sanitary District allowing a diversion not to exceed an annual average of 8500 cubic feet per second, upon certain conditions and extending to December 31, 1929.

In October following, the State of Wisconsin filed a bill against the district amendatory to an earlier one, to which the States of Minnesota, Ohio and Pennsylvania became complainants. The bill alleged that the diversion at Chicago had caused a lowering of the levels of the Great Lakes and of the rivers connecting them, including also the St. Lawrence River, to an amount not less than six inches, to the serious injury of the complainants—this in violation of the law and of their rights. The bill asked for an injunction restraining the defendants from diverting any water from Lake Michigan for sanitary purposes, or in case the canal should be used as a navigable waterway, from diverting any water for such purposes in excess of the amount which the court should determine to be reasonably required for navigation of the canal, without injury to the navigable capacity of the Great Lakes and their connecting waters. Against the bill the State of Illinois filed a demurrer, and the States of Missouri, Kentucky, Tennessee, Louisiana, Mississippi and Arkansas, at their request, were admitted as intervening co-defendants. Later, bills were filed against the State of Illinois by Michigan and New York. The demurrer was overruled and the motion to dismiss the bill was denied by

[16] Viscount Palmerston, speaking in the Don Pacifico debate (Hansard, Parliamentary Debates, 3rd Series, Vol. 112, page 387).

the Supreme Court without prejudice. Among other things, the defendants alleged that the lowering of the lake and river levels due to the diversion at Chicago, authorized by the War Department, did not and would not exceed 4¾ inches. It was also contended that the diversion improved the navigation of the Mississippi River and therefore aided the commerce of the Mississippi Valley.

The granting of the diversion permit of March 3, 1925, by the Secretary of War was shortly afterwards followed by inquiries addressed by the Government of Canada to the Secretary of State regarding the effect of the diversion, and in the following year (1926) the matter became the subject of diplomatic correspondence between the British and American Governments. In a note of February 5, 1926, Sir Esme Howard, British Ambassador at Washington, stated that while the Canadian Government fully appreciated the position of the Sanitary District that the diversion could not be entirely and immediately discontinued without imperiling in some degree the life and health of the citizens of Chicago, the fact remained that "every day that the diversion continued it carried most serious loss to Canada and to every community on the Great Lakes and on the St. Lawrence, by reason of its effect in hindering navigation, in increasing the cost of harbour and canal and river improvements, and in reducing the hydro-electric power capable of development."

The note added:

> The Dominion Government cannot conceal the apprehension in this connection, aroused in Canada by certain proposals for the construction of an Illinois and Mississippi waterway, proposals embodied in measures already introduced into Congress during the present session, or reported as about to be introduced, and which appear to be based and to depend upon the indefinite continuance of the abstraction of the water of the Great Lakes through the Chicago Sanitary District Canal, and even upon the increase to 10,000 cubic feet per second of the amount abstracted. It feels certain that the Government of the United States will agree that whatever temporary and limited concessions might be made upon the ground of public health, no other ground warrants the withdrawal of water from the Great Lakes, much less the extension of the present diversion. It believes it to be a recognized principle of international practice that unless by joint consent, no permanent diversion should be permitted to another watershed from any watershed naturally tributary to the waters forming the boundary between the two countries, and in any case, the decision of the United States Supreme Court of January 5th, 1925, recognizes that in the present instance, the Treaty of January 11th, 1909, expressly provides against uses "affecting the natural level or flow of boundary waters" without the authority of the United States or the Dominion of Canada within their respective jurisdictions, and the approval of the International Joint Commission agreed upon therein.

On April 7, 1926, the legislative assembly of the Province of Ontario adopted a resolution in which, after adverting to the policy of the Chicago

Sanitary District in "abstracting large quantities of water which is part of the watershed of the Great Lakes and diverting it into the Gulf of Mexico," —a matter in which Ontario as a joint riparian owner had "a direct and vital interest,"—it declared that the proposed deep waterway project requiring further diversion was in effect a proposal to violate the treaty of 1909. The resolution concluded that the proposal to deal with a matter without reference to Canada or its interests was "unneighbourly" and "not in accord with the long-established friendly relations that have existed between these two countries and ought to continue." In an undated note of the British Embassy to Mr. Kellogg, transmitted apparently soon after the adoption of the Ontario resolution, reference was made to the proposed construction of the Illinois-Mississippi waterway, involving an increased diversion of water from the Great Lakes for navigation purposes, as one which would "introduce a further disturbing factor into the consideration of a situation already of much difficulty," and one which affected "the vital interests of Canada in the preservation of the Great Lakes system which Canada shares with the United States." It was added that the common interests and the neighborly good will which has marked the settlement of boundary waterways problems reinforce the principles of international practice and the provisions of the Boundary Waterways Treaty in the conclusion that no diversions from the Great Lakes involving a transfer of water from a common watershed to another should be effected or confirmed in either country, unless after joint consideration and agreement.

At the October term (1927) of the Supreme Court, the Honorable Charles E. Hughes was appointed special master with directions and authority to take the evidence in the case then pending before the court and to report his findings of fact and conclusions of law and to make such recommendations as seemed to him proper for a decree. Mr. Hughes, after an exhaustive examination, reported that in his opinion, which was also the opinion of the engineers, the complaint of the States bringing the suit was approximately correct as to the effect of the diversion on the lowering of the lake levels (5 to 6 inches), and that the contention of the defendants that the lowering of the level did not exceed 3.3 to 4 inches as among the several lakes, was incorrect. He concluded, however, that the diversion into the drainage canal could not be immediately discontinued or materially reduced without exposing the inhabitants of the Chicago drainage district to grave danger on account of sewage pollution, and that it would require probably from five to ten years to complete the present program of sewage treatment and thus render it safe to discontinue the diversion or reduce it materially. As to the questions of law involved, he concluded that the suit brought by the complainants was a justiciable controversy, that the State of Illinois and the Sanitary District had no authority to divert the waters of the Great Lakes without the consent of the United States, that it belonged to Congress to regulate the diversion and to determine whether and to what extent it should

be permitted, that Congress had not directly authorized the diversion in question but had conferred authority on the Secretary of War to regulate the diversion, provided he acted in a reasonable and not arbitrary manner, and that the permit of March 3, 1925, issued by the Secretary to the Sanitary District authorizing an average diversion not exceeding 8500 cubic feet per second was legally valid. In the light of all the conclusions, Mr. Hughes recommended that the bill be dismissed by the court without prejudice to the right of the complainants to institute suit to prevent a diversion in case it were made without authority of law. He added, however, that "if a situation should develop in which the defendants were seeking to create or continue a withdrawal of water from Lake Michigan without the sanction of Congress or of administrative officers acting under its authority, the complainant States have such an interest as would entitle them to bring a bill to restrain such action."

At the present writing the Supreme Court has taken no action on Mr. Hughes' recommendation. In case it adopts the recommendation, the diversion authorized by the permit of March 3, 1925, will continue until December 31, 1929, after which the whole matter will have to be determined by Congress, which body, according to the opinion of Mr. Hughes, has full authority to determine whether and to what extent the diversion should be permitted. It is therefore expected that the controversy between the complaining and defendant States will now be shifted to Congress.

It may be remarked that Mr. Hughes in his conclusions does not discuss the international aspects of the case; he was concerned only with questions of municipal law, and more particularly with the question of what authority in the United States has jurisdiction to regulate, permit or prohibit the diversion in question. That important rights and interests of Canada, founded on both the treaty of 1909 and upon well recognized principles of customary international law, are involved, no on will deny.[1] But they are matters which obviously do not fall within the jurisdiction of the Supreme Court of the United States. They involve political questions which must be dealt with through the diplomatic channel and not by the judicial tribunals of either riparian party.

J. W. GARNER.

THE DEFAMATION OF FOREIGN GOVERNMENTS

The recent publication in a chain of American newspapers having wide circulation of what purported to be documents abstracted from the secret archives of a neighboring state has suggested some interesting queries with respect to individual and national responsibility for attacks upon the good name of a friendly foreign government. The circumstances revealed in

[1] As to the law and practice regarding the diversion of boundary waters, see Hyde, International Law Chiefly as Interpreted and Applied by the United States, Vol. I, pp. 316 *ff.*