dependency of China or as an independent but struggling kingdom, exposed to designs on the part of its powerful neighbors, Russia and Japan. The protectorate created by the agreement of 1905 was but a step toward the absorption of the kingdom. It indicated clearly the ultimate intention of Japan, but it did not wholly subject it to the administrative control and domination of the protector. The formal annexation of Korea will no doubt be regretted by the Koreans who desire its independence, but there can be little doubt that its annexation will, in the language of the Japanese proclamation, "maintain peace and stability in Korea and promote the prosperity and welfare of Koreans, and at the same time insure the safety and repose of foreign residents."

"EL CHAMIZAL" DISPUTE BETWEEN THE UNITED STATES AND MEXICO

The announcement some time since that Mexico has accepted Secretary Knox's proposal for the arbitration of the long-pending controversy between the United States and Mexico over the international boundary at El Paso, Texas, would seem to promise an early solution of the only important boundary dispute now existing between the two countries concerned. The agreement provides that the matter is to be referred to the International Boundary Commission, now composed of two commissioners — one of whom this Government appoints and the other Mexico — which is to be augmented for the sole purpose of determining the international title to the land in dispute by the addition of a third commissioner who is to act as umpire and preside over the deliberations of the commission. This commissioner is to be a Canalian jurist, to be selected by the two governments, acting in common accord, or failing such agreement, to be appointed by the Government of the Dominion of Canada, and the decision of this commission upon the title to the land in dispute is to be final and conclusive.

The land involved in the dispute referred to, estimated at some six hundred acres, is within the so-called *El Chamizal* tract, which lies south of the channel of the Rio Grande as it ran in 1853 and north of the present channel of the river. Under the treaties of 1848 and 1853, which will be later discussed in detail, the Rio Grande from its mouth until it passes El Paso, Texas, forms the international boundary line between the United States and Mexico, and it is by virtue of certain provisions of these treaties that the people of Texas lay claim to the land in question, the said Chamizal tract lying wholly north, i. e., on the American side of the river as it now flows.

For many years past this strip of land has been considered by the inhabitants of Texas generally, and El Paso in particular, as a part of the public domain of that State and therefore titles thereto have been granted from time to time by that State to American citizens; the United States Government has erected thereon a custom-house and immigation station; the city authorities of El Paso have erected school houses; the tracks as well as stations and warehouses, of American owned railroads and street railways have been placed thereon, and, in addition, it is said more than one thousand American citizens reside upon this Chamizal tract, over which for many years past the authorities of El Paso and of the State of Texas have exercised both civil and criminal jurisdiction.

In order that the international boundary between the United States and Mexico might be fixed, the two interested powers, on February 2, 1848 — at the close of the Mexican war — concluded the treaty of Guadalupe Hidalgo, Article V of which reads, in part, as follows:

> The boundary line between the two Republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river, following the deepest channel. * * *

In 1853, in order, as stated in the preamble,

> to remove every cause of disagreement, which might interfere in any manner with the better friendship and intercourse between the two countries; and especially, in respect to the true limits which should be established, when notwithstanding what was covenanted in the treaty of Guadalupe Hidalgo in the year 1848, opposite interpretations have been urged,

the two Governments negotiated what is known as the Gadsden Treaty, Article I of which provides, in part, that

> * * * the limits between the two Republics shall be as follows: Beginning in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande as provided in the fifth article of the treaty of Guadalupe Hidalgo, thence as defined in the said article, up the middle of that river to the point where the parallel of 31° 47′ north latitude crosses the same, * * *

(The latitude named is a point just above the City of El Paso.)

Again, in 1884, these two republics "in order to avoid difficulties which may arise through the changes to which those rivers (Rio Grande and Colorado) are subject through the operation of natural forces,"

negotiated another boundary convention. Pertinent provisions of this treaty read as follows:

ARTICLE I.

The dividing line shall forever be that described in the aforesaid treaty and follow the center of the normal channel of the rivers named, notwithstanding any alterations in the banks or in the course of those rivers, provided that such alterations be effected by natural causes through the slow and gradual erosion and deposit of alluvium and not by the abandonment of an existing river bed and the opening of a new one.

ARTICLE II.

Any other change, wrought by the force of the current, whether by the cutting of a new bed, or when there is more than one channel by the deepening of another channel than that which marked the boundary at the time of the survey made under the aforesaid treaty, shall produce no change in the dividing line as fixed by the surveys of the International Boundary Commissions in 1852, but the line then fixed shall continue to follow the middle of the original channel bed, even though this should become wholly dry or be obstructed by deposits.

ARTICLE III.

No artificial change in the navigable course of the river, by building jetties, piers, or obstructions which may tend to deflect the current or produce deposits of alluvium, or by dredging to deepen another than the original channel under the treaty when there is more than one channel, or by cutting waterways to shorten the navigable distance, shall be permitted to affect or alter the dividing line as determined by the aforesaid commissions in 1852 or as determined by Article I hereof and under the reservations therein contained; but the protection of the banks on either side from erosion by revetments of stone or other material not unduly projecting into the current of the river shall not be deemed an artificial change.

In a subsequent boundary convention (1889) the two governments agreed to submit to an International Boundary Commission, to be composed of two commissioners, one to be appointed by the President of the United States and the other by the President of the United States of Mexico,

All differences or questions that may arise on that portion of the frontier between the United States of America and the United States of Mexico where the Rio Grande and the Colorado rivers form the boundary line, whether such differences or questions grow out of alterations or changes in the bed of the aforesaid Rio Grande and that of the aforesaid Colorado river, or of works that may be constructed in said rivers, or of any other cause affecting the boundary line, * * * for examination and decision.

On October 29, 1894, the Mexican Minister for Foreign Affairs (Mr. Mariscal) presented to the International Boundary Commission, appointed under the provisions of the above mentioned convention, the case of Pedro Y. Garcia. The sole question involved in this case, "is," as stated in the Joint Journal of the Commission of November 6, 1895, "whether or not the river in its passage moved over the land (from the Mexican to the American side of the Rio Grande River) by gradual erosion from the Mexican bank and deposit on the United States bank, as described in Article I of the treaty of 1884, or by sudden avulsion, by cutting a new bed or deepening another channel than that which marked the boundary. In the former case the present channel of the river to be the boundary, or in the latter the boundary to be established in the old channel though it be dry."

In its Joint Journal of December 4, 1897, the Commission say:

> * * * the Commissioners have deemed it their duty to jointly suggest in this journal to their respective governments, that in accordance with the spirit of Article 21 of the Treaty of Guadalupe Hidalgo, signed February 2, 1848, that the two Governments agree upon and appoint a third Commissioner, not a citizen of either the United States or Mexico, to meet the two present Commissioners, and hear from them both sides of the question at issue, and act as arbiter wherein the present Commissioners are unable to agree. (Proceedings of the International [Water] Boundary Commission, vol. 1, pp. 94 and 95.)

The Garcia case was the first and last one involving title to land within the Chamizal tract which has been presented to the International Boundary Commission, and the situation has, therefore, remained unchanged, although the matter has not been allowed to slumber owing to the action of those claiming ownership to lands within the Chamizal tract under Mexican titles, on the one hand, and those claiming the same land under American titles, on the other, the former trying to locate or remain thereon and the latter endeavoring to prevent or oust them by legal process or otherwise.

The question has at one time or another during the past several years been brought to the attention of the courts of this country, but each time the American titles have been upheld therein. In two cases involving title to this property (*Warder* v. *Loomis* [197 U. S. 619] and *Cotton* v. *Warder* [207 U. S. 583]) in which the lower courts decreed against the Mexican claimants and in favor of American titles, the Supreme Court of the United States has dismissed the cases for want of jurisdiction. In the former case, which involved title to land

within the disputed Chamizal tract, the United States Circuit Court for the Western District of Texas decided that because the admitted facts and the evidence show that the United States Government and the Government of the State of Texas are, and for many years have been, exercising jurisdiction, civil and political, over the property in question, the fact was established for the purposes of said case that the change in the river by which the land in question was placed on the north side of the Rio Grande River was by accretion, and not by avulsion.

However, since 1907, the courts of this country have refused to take jurisdiction of cases involving title to lands within the Chamizal tract owing to the attitude taken by our national executive which was in turn based upon the position adopted by the Mexican Government that the matter was not a national but an international one, and that, therefore, until finally adjudicated, the courts of neither country were authorized to pass upon the merits of titles derived from either government. This action upon the part of our federal departments and courts is alleged by American claimants to have resulted in a hardship to those claiming land in the Chamizal tract because as they state many irresponsible squatters have taken possession without a vestige of right or title. This state of affairs became so vexatious that Secretary Knox proposed to the Mexican Government the following *modus vivendi* regulating these matters, to which the Mexican Government has assented:

The Government of the United States is to continue to request in the courts the stay of proceedings in cases of persons showing that they are claiming under *prima facie* Mexican title, and that they or their predecessors in interest were in actual occupation of land in the Chamizal tract on March 15, 1910. No other persons are to receive protection at the hands of the United States, but as to all others, the ordinary judicial processes are to take their course.

In order that the United States may intervene in behalf of persons properly entitled under this arrangement, the Department of State is to appoint an officer who shall be authorized to pass upon the question of the existence of *prima facie* Mexican titles and of actual possession under such titles on March 15, 1910, and to report to the Department of State cases wherein ejectment proceedings should be stayed by virtue of international comity and in accordance with the arrangement with Mexico.

Thus it would seem that in addition to providing for the ultimate determination of international title to El Chamizal, the two interested powers have amicably arranged for the amelioration of conditions which for a long time have been a source of considerable annoyance not only to the different parties claiming ownership in the lands comprising El Chamizal tract, but to the two governments as well.

THE AMERICAN SOCIETY FOR THE JUDICIAL SETTLEMENT OF INTERNATIONAL DISPUTES

The American Society for the Judicial Settlement of International Disputes, organized at Baltimore February 6, 1910, has for its aim and purpose not merely the creation of a permanent tribunal for the judicial settlement of international controversies, but also the creation of public sentiment both at home and abroad in order to compel nations to submit their international disputes susceptible of judicial determination to a permanent international court.

The proposed international tribunal is to be permanent, composed of judges who have already had judicial experience or who are lawyers of standing and approved training. The court is to be established at The Hague and is to be permanent, that is to say, it is either to be permanently in session at The Hague, or so permanently composed that its judges may assemble in order to decide promptly and impartially any case submitted to its consideration of which it has jurisdiction, either by a general treaty of arbitration or a special agreement of the litigating nations.

The proposed court differs radically from the so-called permanent court of The Hague. It is not, however, the desire of the society to replace the alleged Permanent Court of Arbitration, but to advocate the creation in addition thereto of a truly permanent tribunal. The creation of the so-called Permanent Court of Arbitration at The Hague marked a great era in the world's progress, although it is merely a panel of judges from which a temporary tribunal may be created for the consideration of any particular case submitted. This panel of judges is composed of persons, often diplomats by profession, and consists of not more than four selected by each nation to serve for a period of six years. From the persons so selected a temporary tribunal of from three to five is constituted for each case submitted to its arbitration. The practical application of this method has developed several