

It may be stated at the outset that this Government does not agree with the interpretation placed by Sir Edward Grey upon the Hay-Pauncefote Treaty, or upon the Clayton-Bulwer Treaty, but, for reasons which will appear herein below, it is not deemed necessary at present to amplify or reiterate the views of this Government upon the meaning of those treaties.

In Sir Edward Grey's communication, after explaining in detail the views taken by his Government as to the proper interpretation of the Hay-Pauncefote Treaty, "so as to indicate the limitations which 'His Majesty's Government' consider it imposes upon the freedom of action of the United States," he proceeds to indicate the points in which the Canal Act infringes what he holds to be Great Britain's treaty rights.

It is obvious from the whole tenor of Sir Edward Grey's communication that in writing it he could not have taken cognisance of the President's Proclamation fixing the canal tolls. Indeed, a comparison of the dates of the Proclamation and the note, which are dated respectively the 13th and 14th November last, shows that the Proclamation could hardly have been received in London in time for consideration in the note. Throughout his discussion of the subject Sir Edward Grey deals chiefly with the possibilities of what the President might do under the Act, which in itself does not prescribe the tolls, but merely authorizes the President to do so; and nowhere does the note indicate that Sir Edward Grey was aware of what the President actually had done in issuing this Proclamation. The Proclamation, therefore, has entirely changed the situation which is discussed by Sir Edward Grey, and the diplomatic discussion which his note now makes inevitable must rest upon the bases as they exist at present, and not upon the hypothesis formed by the British Government at the time this note was written. Sir Edward Grey presents the question of conflict between the Act and the treaty in the following language:—

"It remains to consider whether the Panama Canal Act, in its present form, conflicts with the treaty rights to which His Majesty's Government maintain they are entitled.

"Under section 5 of the Act the President is given, within certain defined limits, the right to fix the tolls, but no tolls are to be levied upon ships engaged in the coastwise trade of the United States, and the tolls, when based upon net registered tonnage for ships of commerce, are not to exceed 1 dol. 25 c. per net registered ton, nor be less, other than for vessels of the United States and its citizens, than the estimated proportionate cost of the actual maintenance and operation of the canal. There is also an exception for the exemptions granted by Article 19 of the convention with Panama of 1903.

"The effect of these provisions is that vessels engaged in the coastwise trade will contribute nothing to the upkeep of the canal. Similarly, vessels belonging to the Government of the Republic of Panama will, in pursuance of the treaty of 1903, contribute nothing to the upkeep of the canal. Again, in the cases where tolls are levied, the tolls in the case of ships belonging to the United States and its citizens may be fixed at a lower rate than in the case of foreign ships, and may be less than the estimated proportionate cost of the actual maintenance and operation of the canal.

"These provisions (1) clearly conflict with the rule embodied in the principle established in Article 8 of the Clayton-Bulwer Treaty of equal treatment for British and United States ships, and (2) would enable tolls to be fixed which would not be just and equitable, and would therefore not comply with Rule 1 of Article 3 of the Hay-Pauncefote Treaty."

From this it appears that three objections are made to the provisions of the Act: first, that no tolls are to be levied upon ships engaged in the coastwise trade of the United States; second, that a discretion appears to be given to the President to discriminate in fixing tolls in favour of ships belonging to the United States and its citizens as against foreign ships; and, third, that an exemption has been given to the vessels of the Republic of Panama under Article 19 of the convention with Panama of 1903.

Considered in the reverse order of their statement, the third objection, coming at this time, is a great and complete surprise to this Government. The exemption under that article applies only to the Government vessels of Panama, and was part of the agreement with Panama under which the canal was built. The convention containing the exemption was ratified in 1904, and since then to the present time no claim has been made by Great Britain that it conflicted with British rights. The United States has always asserted the principle that the status of the countries immediately concerned, by reason of their political relation to the territory in which the canal was to be constructed, was different from that of all other countries. The Hay-Herran Treaty with Columbia of 1903 also provided that the war-vessels of that country were to be given free passage. It has always been supposed by this Government that Great Britain recognized the propriety of the exemptions made in both of those treaties. It is not believed, therefore, that the British Government intend to be understood as proposing arbitration upon the question of whether or not this provision of the Act, which, in accordance with our treaty with Panama, exempts from tolls the Government vessels of Panama, is in conflict with other provisions of the Hay-Pauncefote Treaty.

Considering the second objection, based upon the discretion thought to be conferred upon the President to discriminate in favour of ships belonging to the United States and its citizens, it is sufficient, in view of the fact that the President's Proclamation fixing the tolls was silent on the subject, to quote the language used by the President in the memorandum attached to the Act at the time of signature, in which he says,—

"It is not, therefore, necessary to discuss the policy of such discrimination until the question may arise in the exercise of the President's discretion."

On this point no question has yet arisen which, in the words of the existing arbitration treaty between the United States, "it may not have been possible to settle by diplomacy," and until then any suggestion of arbitration may well be regarded as premature.

It is not believed, however, that in the objection now under consideration Great Britain intends to question the right of the United States to exempt from the payment of tolls its vessels