

1913.
NEW ZEALAND.

THE PANAMA CANAL

(PAPERS RELATIVE TO).

Presented to both Houses of the General Assembly by Command of His Excellency the Governor.

New Zealand, No. 226.

MY LORD,—

Downing Street, 2nd August, 1912.

I have the honour to transmit to you, for the information of your Ministers, the accompanying copy of a note addressed by His Majesty's Chargé d'Affaires at Washington to the Secretary of State of the United States on the subject of the tolls to be levied on vessels passing through the Panama Canal.

2. The contents of the note were communicated by the Secretary of State to the Senate, and the matter is still engaging the consideration of that body.

I have, &c.,
L. HARCOURT.

Governor the Right Hon. Lord Islington, K.C.M.G., D.S.O., &c.

SIR,—

British Embassy, Kineo, Maine, 9th July, 1912.

The attention of His Majesty's Government has been called to the various proposals that have from time to time been made for the purpose of relieving American shipping from the burden of the tolls to be levied on vessels passing through the Panama Canal, and these proposals, together with the arguments that have been used to support them, have been carefully considered with a view to the bearing on them of the provisions of the treaty between the United States and Great Britain of the 18th November, 1901.

The proposals may be summed up as follows:—

- (1.) To exempt all American shipping from the tolls.
- (2.) To refund to all American ships the tolls which they may have paid.
- (3.) To exempt American ships engaged in the coastwise trade.
- (4.) To repay the tolls to American ships engaged in the coastwise trade.

The proposal to exempt all American shipping from the payment of the tolls would, in the opinion of His Majesty's Government, involve an infraction of the treaty; nor is there, in their opinion, any difference in principle between charging tolls only to refund them and remitting tolls altogether. The result is the same in either case; and the adoption of the alternative method of refunding the tolls in preference to that of remitting them, while perhaps complying with the letter of the treaty, would still contravene its spirit. It has been argued that a refund of the tolls would merely be equivalent to the subsidy, and that there is nothing in the Hay-Pauncefote Treaty which limits the right of the United States to subsidize its shipping. It is true that there is nothing in that treaty to prevent the United States from subsidizing its shipping, and if granted a subsidy His Majesty's Government could not be in a position to complain; but there is a great distinction between a general subsidy, either to shipping at large or to shipping engaged in any given trade, and a subsidy calculated particularly with reference to the amount of user of the canal by the subsidized lines or vessels. If such a subsidy were granted it would not, in the opinion of His Majesty's Government, be in accordance with the obligations of the treaty.

As to the proposal that exemption shall be given to vessels engaged in the coastwise trade a more difficult question arises. If the trade should be so regulated as to make it certain that only *bona fide* coastwise traffic which is reserved for United States vessels would be benefited by this exemption, it may be that no objection could be taken; but it appears to my Government that it would be impossible to frame regulations which would prevent the exemption from resulting in fact in a preference to United States shipping, and consequently in an infraction of the treaty.

I have, &c.,
Chargé d'Affaires.

No. 231.—Commercial (45196).

Sir,—

British Embassy, Washington, 15th October, 1912.

I have the honour to transmit to you herewith copies of the summary of a report which is shortly to be issued by Mr. John Barrett, Director-General of the Pan-American Union, on the subject of the Panama Canal and Pan-American trade. I shall not fail to send you copies of the report itself as soon as it is published.

I have, &c.,

(For the Ambassador),

The Right Hon. Sir Edward Grey, Bart., L.G., &c.

A. CLARK KERR.

SPECIAL REPORT OF THE PANAMA CANAL.—ADVANCE MEMORANDUM FOR THE PRESS.

(Released for newspapers, Friday morning, 20th September, or after, as space permits.)

Introductory Notes.—The following is a brief advance summary of the chief points in a special report of Director-General Barrett, of the Pan-American Union, to be shortly published, on the Panama Canal and Pan-American trade. It is based, first, on a careful study during his recent official visit to Europe of what European Governments and commercial interests are doing to get ready for the canal and to develop trade with South and Central America; and, secondly, on reliable reports he has received direct from Latin America and other countries. The Pan-American Union, being an official international organization maintained by all the American republics for the development of commerce among them, keeps in closest touch with the situation not only in North and South America, but in Europe and even Asia. The findings, therefore, of this report have especial authority and significance.

Only about a year and a half remain before the Panama Canal will be open to commercial traffic. Unless the manufacturing, exporting, importing, and shipping interests of the United States exert themselves to the limit during the next eighteen months they will find that they will be distanced from the start by foreign competitors in deriving practical advantages from the canal and the rapidly developing field in Latin America.

From his own study on the ground of European conditions, and from reliable official reports received from both South America and Asia, Director-General Barrett makes the above statement at the beginning of his report, and then gives the following facts:—

1. Every important port of Great Britain, France, Germany, Holland, Belgium, Scandinavia, Spain, Italy, and Austria is being improved to the highest degree of efficiency for oversea commerce.

2. Every European shipbuilding yard of recognized standing is busy to its capacity constructing ocean-going merchant vessels. Old-established steamship lines are adding up-to-date vessels to their fleets, and new companies are being formed and ordering ships.

3. European Governments are instructing their diplomatic and consular agents to study and report upon every phase of trade opportunity expected to result from the canal. Their Chambers of Commerce and their commercial organizations are co-operating along the same lines, and the business schools are educating trained men for the field. Government officials and representative men in private life are showing particular hospitality and courtesies to the visiting representative men of Latin America and all the other countries whose trade they want. Their banking and investment houses are extending their foreign facilities. Their private business companies of already large established trade, and their new companies, are sending agents and scouts to Latin America and all parts of the world affected by the canal to investigate trade possibilities.

4. In Japan three steamship companies are building vessels for the canal. Japanese banks are considering the opening of branches in Latin America. A score of Japanese manufacturing, exporting, and importing houses have numerous agents in Central and South America. One Chinese-owned steamship company is planning to operate a line from Shanghai and Hong Kong to Central and South America. Australia's commercial organizations are sending men to South America to develop trade, while Australia and New Zealand are planning to establish a canal steamship line of their own. A new line of freight vessels is to run from Calcutta or Bombay to South America. Canada will run two new direct lines respectively from Vancouver and Montreal to the corresponding coasts of Latin America.

5. The west or Pacific Coast of South America, reaching five thousand miles south from Panama, is showing great preliminary activity. Chile, Peru, and Bolivia are spending fifty million dollars in opening their interiors with railways. Chile is building, at Valparaiso, a new artificial harbour to cost fifteen million dollars. Guayaquil, the principal port of Ecuador, and one of the best harbours on the Pacific Ocean, is to be made sanitary at a large expense. Callao, the chief port of Peru, is being improved. On the east coast the activity is even greater, for both Argentina and Uruguay will spend nearly thirty million dollars in port-improvements at Buenos Aires and Monte Video respectively. Brazil is putting in first-class condition every port along her three thousand miles of coast-line from Rio Grande do Sul in the south to Para at the mouth of the Amazon. One hundred million dollars are being expended in constructing new railways into the interior of Brazil. Venezuela and Colombia, Central America, Mexico, Cuba, and the other West Indian countries are awakening also to the significance and possibilities of the canal, and sending agents and appointing commissions to study the situation as it affects them.

The conclusion of Director-General Barrett, after this review, is summed up in the statement that while the United States Government and some of its commercial organizations and interests are doing much to get ready for the canal and to develop Pan-American trade, and

deserve great credit for what they are doing, they must in view of these facts redouble and extend their efforts, otherwise they will tail the international race for the trade of the Panama Canal and Latin America. They must make their slogan from now on, without any let-up, "Get ready for the Panama Canal and go after Pan-American commerce."

If this report excites new interest and desire for further information, the Pan-American Union at Washington, as an official organization maintained by the United States and other American Governments, stands ready to supply full data regarding the commerce and progress of the twenty Latin American countries and the possibilities of the Panama Canal.

Information Department, Pan-American Union, Washington, D.C.

New Zealand, No. 318.

MY LORD,—

Downing Street, 1st November, 1912.

With reference to previous correspondence relative to the Panama Canal Act, I have the honour to transmit to you, for the information of your Ministers, copies of two despatches from His Majesty's Embassy at Washington, forwarding respectively a circular concerning the registration of foreign-built ships, which has been issued by the United States Government in pursuance of section 5 of the Panama Canal Act, and copy of a summary of a report on the subject of the Panama Canal and Pan-American trade about to be published by the Pan-American Union.

You will receive a copy of Mr. Barrett's report when published direct from His Majesty's Ambassador at Washington.

I have, &c.,

L. HARCOURT.

Governor the Right Hon. Lord Islington, K.C.M.G., D.S.O., &c.

South and Central America.—(40619.)

28th September.—Section 1.

No. 1.

Mr. MITCHELL INNES to Sir EDWARD GREY (received 28th September).

(No. 215.—Commercial.)

SIR,—

Kineo, Maine, 17th September, 1912.

With reference to my despatch, No. 206, of the 6th instant, in which I had the honour to transmit to you copies of the Panama Canal Act as finally printed, I enclose herewith one copy of a circular, issued to the Collectors of Customs by the United States Department of Commerce and Labour, embodying the regulations which are to govern the enforcement of section 5 of the above-mentioned Act respecting the registry of foreign-built vessels.

Further copies of this circular will be sent as soon as possible.

I have, &c.,

A. MITCHELL INNES.

Enclosure No. 1.

Circular issued to United States Collectors of Customs.

Registry of Foreign-built Vessels,

Department of Commerce and Labour, Washington, 30th August, 1912.

To Collectors of Customs and others concerned.

Your attention is invited to so much of section 5 of the Panama Canal Act, approved the 24th August, 1912, and now in effect, as provides—

Section 5. That the President is hereby authorized to prescribe and from time to time change the tolls that shall be levied by the Government of the United States for the use of the Panama Canal: Provided that no tolls, when prescribed as above, shall be changed unless six months' notice thereof shall have been given by the President by Proclamation. No tolls shall be levied upon vessels engaged in the coastwise trade of the United States.

That section 4132 of the Revised Statutes is hereby amended to read as follows:—

"Section 4132. Vessels built within the United States and belonging wholly to citizens thereof, and vessels which may be captured in war by citizens of the United States and lawfully condemned as prize, or which may be adjudged to be forfeited for a breach of the laws of the United States, and seagoing vessels, whether steam or sail, which have been certified by the Steamboat Inspection Service as safe to carry dry and perishable cargo, not more than five years old at the time they apply for registry, wherever built, which are to engage only in trade with foreign countries or with the Philippine Islands and the Islands of Guam and Tutuila, being wholly owned by citizens of the United States or corporations organized and chartered under the laws of the United States or of any State thereof the president and managing directors of which shall be citizens of the United States, and no others, may be registered as directed in this title. Foreign-built vessels registered pursuant to this Act shall not engage in the coastwise trade: Provided that a foreign-built yacht, pleasure-boat, or vessel, not used or intended to be used for trade, admitted to American registry pursuant to this section shall not be exempt from the collection of *ad valorem* duty provided in section 37 of the Act approved the 5th August, 1909, entitled 'An Act to provide Revenue, equalize Duties, and encourage the Industries of the United States, and for other Purposes.' That all materials of foreign production

which may be necessary for the construction or repair of vessels built in the United States, and all such materials necessary for the building or repair of their machinery, and all articles necessary for their outfit and equipment, may be imported into the United States free of duty under such regulations as the Secretary of the Treasury may prescribe: Provided further that such vessels so admitted under the provisions of this section may contract with the Postmaster-General, under the Act of the 3rd March, 1891, entitled 'An Act to provide for Ocean Mail-services between the United States and Foreign Ports, and to promote Commerce,' so long as such vessels shall in all respects comply with the provisions and requirements of said Act."

The Commissioner of Navigation is specially charged with the decision of all questions relating to the issue of registers of vessels (Act of the 5th July, 1884, section 2) and correspondence concerning the issue of registers to foreign-built vessels will be conducted by or through Collectors of Customs with him. In the case of an application for the registry of a foreign-built vessel under the Act above quoted the following procedure will be observed:—

1. In lieu of the builder's certificate, the original or a certified copy of the ship's foreign register will be filed with the application.
2. The measurement laws of the United States and of the principal maritime nations are substantially the same, and the measurement, preliminary to the issue of the register, should accord substantially with the foreign register and certificate of measurement. Any material difference will be reported to the Commissioner of Navigation.
3. The local Inspectors of steam-vessels on application before the issue of a register will inspect the vessel so far as may be necessary to determine that it is "safe to carry dry and perishable cargo," and if they find the vessel meets this requirement they shall file a certificate that under section 5 of the Panama Canal Act the vessel is safe to carry dry and perishable cargo. This inspection and certificate are to determine the eligibility of the ship to registry under the Act. They do not supersede the full inspection and certificate required subsequently under the inspection laws in the case of steam-vessels.
4. Only foreign-built vessels "not more than five years old at the time they apply for registry" are eligible under the Act quoted. The date of build will be taken from the foreign register.
5. The ownership and citizenship of owners will be established as in the case of vessels built in the United States.
6. In the case of corporate ownership the applicant will furnish a certificate as to the organization of the corporation and the names of its president and managing directors from the Secretary of State of the State with whom the articles of incorporation are filed. The citizenship of the president and managing directors will be established as in the case of individual owners of vessels built in the United States.
7. Every register issued pursuant to the Act quoted shall carry on its face the following notation in red ink: "Issued pursuant to section 5 of the Panama Canal Act, entitling the vessel to engage only in trade with foreign countries or with the Philippine Islands and the islands of Guam and Tutuila. This vessel shall not engage in the coastwise trade." This notation must appear in similar manner on all subsequent registers.
8. The provisions concerning foreign-built yachts are also included in section 37 of the Tariff Act of the 5th August, 1909.
9. The provisions relating to free materials, amending sections 19 and 20 of the Tariff Act of the 5th August, 1909, are administered by the Secretary of the Treasury.
10. The provisions relating to the Ocean Mail Act of 1891 are administered by the Postmaster-General.

BENJ. S. CABLE, Acting-Secretary.

New Zealand, No. 376.

SIR,—

Downing Street, 12th December, 1912.

I have the honour to transmit to you, for the information of your Ministers, copies of a parliamentary paper containing the text of a despatch from the Secretary of State for Foreign Affairs respecting the Panama Canal Act, which His Majesty's Ambassador at Washington communicated to the United States Government on the 9th instant.

The Officer administering the Government of New Zealand.

I have, &c.,

L. HARCOURT.

DESPATCH TO HIS MAJESTY'S AMBASSADOR AT WASHINGTON RESPECTING THE PANAMA CANAL ACT.
Sir EDWARD GREY to Mr. BRYCE.

SIR,—

Foreign Office, 14th November, 1912.

Your Excellency will remember that on the 8th July, 1912, Mr. Mitchell Innes communicated to the Secretary of State the objections which His Majesty's Government entertained to the legislation relating to the Panama Canal, which was then under discussion in Congress, and that on the 27th August, after the passing of the Panama Canal Act and the issue of the President's memorandum on signing it, he informed Mr. Knox that when His Majesty's Government had had time to consider fully the Act and the memorandum a further communication would be made to him.

Since that date the text of the Act and the memorandum of the President have received attentive consideration at the hands of His Majesty's Government. A careful study of the Pre-

sident's memorandum has convinced me that he has not fully appreciated the British point of view, and has misunderstood Mr. Mitchell Innes's note of the 8th July. The President argues upon the assumption that it is the intention of His Majesty's Government to place upon the Hay-Pauncefote Treaty an interpretation which would prevent the United States from granting subsidies to their own shipping passing through the canal, and which would place them at a disadvantage as compared with other nations. This is not the case. His Majesty's Government regard equality of all nations as the fundamental principle underlying the treaty of 1901, in the same way that it was the basis of the Suez Canal Convention of 1888, and they do not seek to deprive the United States of any liberty which is open either to themselves or to any other nation; nor do they find either in the letter or in the spirit of the Hay-Pauncefote Treaty any surrender by either of the contracting Powers of the right to encourage its shipping or its commerce by such subsidies as it may deem expedient.

The terms of the President's memorandum render it essential that I should explain in some detail the view which His Majesty's Government take as to what is the proper interpretation of the treaty, so as to indicate the limitations which they consider it imposes upon the freedom of action of the United States, and the points in which the Panama Canal Act, as enacted, infringes what His Majesty's Government hold to be their treaty rights.

The Hay-Pauncefote Treaty does not stand alone; it was the corollary of the Clayton-Bulwer Treaty of 1850. The earlier treaty was, no doubt, superseded by it, but its general principle, as embodied in Article 8, was not to be impaired. The object of the later treaty is clearly shown by its preamble; it was "to facilitate the construction of a ship-canal to connect the Atlantic and Pacific Oceans by whatever route may be deemed expedient, and to that end to remove any objection which may arise out of the Clayton-Bulwer Treaty to the construction of such canal under the auspices of the Government of the United States, without impairing the general principle of neutralization established in Article 8 of that convention." It was upon that footing, and upon that footing alone, that the Clayton-Bulwer Treaty was superseded.

Under that treaty both parties had agreed not to obtain any exclusive control over the contemplated ship-canal, but the importance of the great project was fully recognized, and therefore the construction of the canal by others was to be encouraged, and the canal when completed was to enjoy a special measure of protection on the part of both the contracting parties.

Under Article 8 the two Powers declared their desire, in entering into the convention, not only to accomplish a particular object, but also to establish a general principle, and therefore agreed to extend their protection to any practicable transisthmian communication, either by canal or railway, and either at Tehuantepec or Panama, provided that those who constructed it should impose no other charges or conditions of traffic than the two Governments should consider just and equitable, and that the canal or railway, "being open to the subjects and citizens of Great Britain and the United States on equal terms, should also be open to the subjects of any other State which was willing to join in the guarantee of joint protection."

So long as the Clayton-Bulwer Treaty was in force, therefore, the position was that both parties to it had given up their power of independent action, because neither was at liberty itself to construct the canal and thereby obtain the exclusive control which such construction would confer. It is also clear that if the canal had been constructed while the Clayton-Bulwer Treaty was in force, it would have been open, in accordance with Article 8, to British and United States ships on equal terms, and equally clear, therefore, that the tolls leviable on such ships would have been identical.

The purpose of the United States in negotiating the Hay-Pauncefote Treaty was to recover their freedom of action, and obtain the right, which they had surrendered, to construct the canal themselves; this is expressed in the preamble to the treaty, but the complete liberty of action consequential upon such construction was to be limited by the maintenance of the general principle embodied in Article 8 of the earlier treaties. That principle, as shown above, was one of equal treatment for both British and United States ships, and a study of the language of Article 8 shows that the word "neutralization" in the preamble of the later treaty is not there confined to belligerent operations, but refers to the system of equal rights for which Article 8 provides.

If the wording of the article is examined, it will be seen that there is no mention of belligerent action in it at all. Joint protection and equal treatment are the only matters alluded to, and it is to one, or both, of these that neutralization must refer. Such joint protection has always been understood by His Majesty's Government to be one of the results of the Clayton-Bulwer Treaty, of which the United States was most anxious to get rid, and they can scarcely therefore believe that it was such joint protection that the United States were willing to keep alive, and to which they referred in the preamble of the Hay-Pauncefote Treaty. It certainly was not the intention of His Majesty's Government that any responsibility for the protection of the canal should attach to them in the future. Neutralization must therefore refer to the system of equal rights.

It thus appears from the preamble that the intention of the Hay-Pauncefote Treaty was that the United States was to recover the right to construct the transisthmian canal upon the terms that, when constructed, the canal was to be open to British and United States ships on equal terms.

The situation created was in fact identical with that resulting from the Boundary Waters Treaty of 1909 between Great Britain and the United States, which provided as follows:—

"The high contracting parties agree that the navigation of all navigable boundary waters shall for ever continue free and open for the purposes of commerce to the inhabitants and to the ships, vessels, and boats of both countries equally, subject, however, to any laws and regulations of either country, within its own territory, not inconsistent with such privilege of free navigation, and applying equally and without discrimination to the inhabitants, ships, vessels, and boats of both countries.

"It is further agreed that so long as this treaty shall remain in force this same right of navigation shall extend to the waters of Lake Michigan, and to all canals connecting boundary waters and now existing or which may hereafter be constructed on either side of the line. Either of the high contracting parties may adopt rules and regulations governing the use of such canals within its own territory, and may charge tolls for the use thereof; but all such rules and regulations and all tolls charged shall apply alike to the subjects or citizens of the high contracting parties . . . and they shall be placed on terms of equality in the use thereof."

A similar provision, though more restricted in its scope, appears in Article 27 of the Treaty of Washington, 1871, and Your Excellency will no doubt remember how strenuously the United States protested, as a violation of equal rights, against a system which Canada had introduced of a rebate of a large portion of the tolls on certain freight on the Welland Canal, provided that such freight was taken as far as Montreal, and how in the face of that protest the system was abandoned.

The principle of equality is repeated in Article 3 of the Hay-Pauncefote Treaty, which provides that the United States adopts, as the basis of the neutralization of the canal, certain rules, substantially as embodied in the Suez Canal Convention. The first of these rules is that the canal shall be free and open to the vessels of commerce and war of all nations observing the rules on terms of entire equality, so that there shall be no discrimination against any such nation.

The word "neutralization" is no doubt used in Article 3 in the same sense as in the preamble, and implies subjection to the system of equal rights. The effect of the first rule is therefore to establish the provision, foreshadowed by the preamble and consequent on the maintenance of the principle of Article 8 of the Clayton-Bulwer Treaty, that the canal is to be open to British and United States vessels on terms of entire equality. It also embodies a promise on the part of the United States that the ships of all nations which observe the rules will be admitted to similar privileges.

The President in his memorandum treats the words "all nations" as excluding the United States. He argues that, as the United States is constructing the canal at its own cost on territory ceded to it, it has, unless it has restricted itself, an absolute right of ownership and control, including the right to allow its own commerce the use of the canal upon such terms as it sees fit, and that the only question is whether it has by the Hay-Pauncefote Treaty deprived itself of the exercise of the right to pass its own commerce free or remit tolls collected for the use of the canal. He argues that Article 3 of the treaty is nothing more than a declaration of policy by the United States that the canal shall be neutral and all nations treated alike, and no discrimination made against any one of them observing the rules adopted by the United States. "In other words, it was a conditional favoured-nation treatment, the measure of which, in the absence of express stipulations to that effect, is not what the country gives to its own nationals, but the treatment it extends to other nations."

For the reasons they have given above His Majesty's Government believe this statement of the case to be wholly at variance with the real position. They consider that by the Clayton-Bulwer Treaty the United States had surrendered the right to construct the canal, and that by the Hay-Pauncefote Treaty they recovered that right upon the footing that the canal should be open to British and United States vessels upon terms of equal treatment.

The case cannot be put more clearly than it was put by Mr. Hay himself, who, as Secretary of State, negotiated the Hay-Pauncefote Treaty, in the full account of the negotiations which he sent to the Senate Committee on Foreign Relations (see Senate Document No. 746, 61st Congress, 3rd session):—

"These rules are adopted in the treaty with Great Britain as a consideration for getting rid of the Clayton-Bulwer Treaty."

If the rules set out in the Hay-Pauncefote Treaty secure to Great Britain no more than most-favoured-nation treatment, the value of the consideration given for superseding the Clayton-Bulwer Treaty is not apparent to His Majesty's Government. Nor is it easy to see in what way the principle of Article 8 of the Clayton-Bulwer Treaty, which provides for equal treatment of British and United States ships, has been maintained.

I notice that in the course of the debate in the Senate on the Panama Canal Bill the argument was used by one of the speakers that the third, fourth, and fifth rules embodied in Article 3 of the treaty show that the words "all nations" cannot include the United States, because if the United States were at war it is impossible to believe that it could be intended to be debarred by the treaty from using its own territory for revictualling its warships or landing troops.

The same point may strike others who read nothing but the text of the Hay-Pauncefote Treaty itself, and I think it is therefore worth while that I should briefly show that this argument is not well founded.

The Hay-Pauncefote Treaty of 1901 aimed at carrying out the principle of the neutralization of the Panama Canal by subjecting it to the same regime as the Suez Canal. Rules 3, 4, and 5 of Article 3 of the treaty are taken almost textually from Articles 4, 5, and 6 of the Suez Canal Convention of 1888. At the date of the signature of the Hay-Pauncefote Treaty the territory on which the Isthmian Canal was to be constructed did not belong to the United States; consequently there was no need to insert in the draft treaty provisions corresponding to those in Articles 10 and 13 of the Suez Canal Convention, which preserve the sovereign rights of Turkey and of Egypt, and stipulate that Articles 4 and 5 shall not effect the right of Turkey as the local sovereign, and of Egypt within the measure of her autonomy, to take such measures as may be necessary for securing the defence of Egypt and the maintenance of public order, and, in the case of Turkey, the defence of her possessions on the Red Sea.

Now that the United States has become the practical sovereign of the canal, His Majesty's Government do not question its title to exercise belligerent rights for its protection.

For these reasons, His Majesty's Government maintain that the words "all nations" in Rule 1 of Article 3 of the Hay-Pauncefote Treaty include the United States, and that, in consequence, British vessels using the canal are entitled to equal treatment with those of the United States, and that the same tolls are chargeable on each.

This rule also provides that the tolls should be "just and equitable." The purpose of these words was to limit the tolls to the amount representing the fair value of the services rendered—i.e., to the interest on the capital expended and the cost of the operation and maintenance of the canal. Unless the whole volume of shipping which passes through the canal, and which all benefits equally by its services, is taken into account, there are no means of determining whether the tolls chargeable upon a vessel represent that vessel's fair proportion of the current expenditure properly chargeable against the canal—that is to say, interest on the capital expended in construction, and the cost of operation and maintenance. If any classes of vessels are exempted from tolls in such a way that no receipts from such ships are taken into account in the income of the canal, there is no guarantee that the vessels upon which tolls are being levied are not being made to bear more than their fair share of the upkeep. Apart altogether, therefore, from the provision in Rule 1 about equality of treatment for all nations, the stipulation that the tolls shall be just and equitable, when rightly understood, entitles His Majesty's Government to demand, on behalf of British shipping, that all vessels passing through the canal, whatever their flag or their character, shall be taken into account in fixing the amount of the tolls.

The result is that any system by which particular vessels or classes of vessels were exempted from the payment of tolls would not comply with the stipulations of the treaty that the canal should be open on terms of entire equality, and that the charges should be just and equitable.

The President, in his memorandum, argues that if there is no difference, as stated in Mr. Mitchell Innes's note of the 8th July, between charging tolls only to refund them and remitting tolls altogether, the effect is to prevent the United States from aiding its own commerce in the way that all other nations may freely do. This is not so. His Majesty's Government have no desire to place upon the Hay-Pauncefote Treaty an interpretation which would impose upon the United States any restriction from which other nations are free, or reserve to such other nation any privilege which is denied to the United States. Equal treatment, as specified in the treaty, is all they claim.

His Majesty's Government do not question the right of the United States to grant subsidies to United States shipping generally, or to any particular branches of that shipping, but it does not follow therefore that the United States may not be debarred by the Hay-Pauncefote Treaty from granting a subsidy to certain shipping in a particular way, if the effect of the method chosen for granting such subsidy would be to impose upon British or other foreign shipping an unfair share of the burden of the upkeep of the canal, or to create a discrimination in respect of the conditions or charges of traffic, or otherwise to prejudice rights secured to British shipping by this treaty.

If the United States exempt certain classes of ships from the payment of tolls, the result would be to form a subsidy to those vessels which His Majesty's Government consider the United States are debarred by the Hay-Pauncefote Treaty from making.

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.

It has been argued that as the coastwise trade of the United States is confined by law to United States vessels, the exemption of vessels engaged in it from the payment of tolls cannot injure the interests of foreign nations. It is clear, however, that the interests of foreign nations will be seriously injured in two material respects.

In the first place, the exemption will result in the cost of the working of the canal being borne wholly by foreign-going vessels, and on such vessels, therefore, will fall the whole burden of raising the revenue necessary to cover the cost of working and maintaining the canal. The possibility, therefore, of fixing the toll on such vessels at a lower figure than 1 dol. 25 c. per ton, or of reducing the rate below that figure at some future time, will be considerably lessened by the exemption.

In the second place, the exemption will, in the opinion of His Majesty's Government, be a violation of the equal treatment secured by the treaty, as it will put the "coastwise trade" in a preferential position as regards other shipping. Coastwise trade cannot be circumscribed so

completely that benefits conferred upon it will not affect vessels engaged in the foreign trade. To take an example, if cargo intended for a United States port beyond the canal, either from east or west, and shipped on board a foreign ship, could be sent to its destination more cheaply, through the operation of the proposed exemption, by being landed at a United States port before reaching the canal, and then sent on as coastwise trade, shippers would benefit by adopting this course in preference to sending the goods direct to their destination through the canal on board the foreign ship.

Again, although certain privileges are granted to vessels engaged in an exclusively coastwise trade, His Majesty's Government are given to understand that there is nothing in the laws of the United States which prevents any United States ship from combining foreign commerce with coastwise trade, and, consequently, from entering into direct competition with foreign vessels while remaining *prima facie* entitled to the privilege of free passage through the canal. Moreover, any restrictions which may be deemed to be now applicable might at any time be removed by legislation, or even, perhaps, by mere changes in the regulations.

In these and in other ways foreign shipping would be seriously handicapped, and any adverse result would fall more severely on British shipping than on that of any other nationality.

The volume of British shipping which will use the canal will in all probability be very large. Its opening will shorten by many thousands of miles the waterways between England and other portions of the British Empire, and if on the one hand it is important to the United States to encourage its mercantile marine, and establish competition between coastwise traffic and trans-continental railways, it is equally important to Great Britain to secure to its shipping that just and impartial treatment to which it is entitled by treaty, and in return for a promise of which it surrendered the rights which it held under the earlier convention.

There are other provisions of the Panama Canal Act to which the attention of His Majesty's Government has been directed. These are contained in section 11, part of which enacts that a railway company subject to the Inter-State Commerce Act, 1887, is prohibited from having any interest in vessels operated through the canal with which such railway may compete; and another part provides that a vessel permitted to engage in the coastwise or foreign trade of the United States is not allowed to use the canal if its owner is guilty of violating the Sherman Anti-Trust Act.

His Majesty's Government do not read this section of the Act as applying to or affecting British ships, and they therefore do not feel justified in making any observations upon it. They assume that it applies only to vessels flying the flag of the United States, and that it is aimed at practices which concern only the internal trade of the United States. If this view is mistaken and the provisions are intended to apply under any circumstances to British ships, they must reserve their right to examine the matter further and to raise such contentions as may seem justified.

His Majesty's Government feel no doubt as to the correctness of their interpretation of the treaties of 1850 and 1901, and as to the validity of the rights they claim under them for British shipping; nor does there seem to them to be any room for doubt that the provisions of the Panama Canal Act as to tolls conflict with the rights secured to their shipping by the treaty. But they recognize that many persons of note in the United States, whose opinions are entitled to great weight, hold that the provisions of the Act do not infringe the conventional obligations by which the United States is bound, and under these circumstances they desire to state their perfect readiness to submit the question to arbitration if the Government of the United States would prefer to take this course. A reference to arbitration would be rendered unnecessary if the Government of the United States should be prepared to take such steps as would remove the objections to the Act which His Majesty's Government have stated.

Knowing as I do full well the interest which this great undertaking has aroused in the New World and the emotion with which its opening is looked forward to by United States citizens, I wish to add before closing this despatch that it is only with great reluctance that His Majesty's Government have felt bound to raise objection on the ground of treaty rights to the provisions of the Act. Animated by an earnest desire to avoid points which might in any way prove embarrassing to the United States, His Majesty's Government have confined their objections within the narrowest possible limits, and have recognized in the fullest manner the right of the United States to control the canal. They feel convinced that they may look with confidence to the Government of the United States to ensure that, in promoting the interests of United States shipping, nothing will be done to impair the safeguards guaranteed to British shipping by treaty.

Your Excellency will read this despatch to the Secretary of State, and will leave with him a copy.

I am, &c.,

E. GREY.

APPENDIX I.

An Act to provide for the Opening, Maintenance, Protection, and Operation of the Panama Canal, and the Sanitation and Government of the Canal Zone.

BE IT ENACTED by the Senate and House of Representatives of the United States of America in Congress assembled,—

That the zone of land and land under water of the width of ten miles extending to the distance of five miles on each side of the centre-line of the route of the canal now being constructed thereon, which zone begins in the Caribbean Sea three marine miles from mean low-water mark and extends to and across the Isthmus of Panama into the Pacific Ocean to the distance of three marine miles from mean low-water mark, excluding therefrom the cities of Panama and Colon

and their adjacent harbours located within said zone, as excepted in the treaty with the Republic of Panama dated the 18th November, 1903, but including all islands within said described zone, and in addition thereto the group of islands in the Bay of Panama named Perico, Naos, Culebra, and Flamenco, and any lands and waters outside of said limits above-described which are necessary or convenient, or from time to time may become necessary or convenient, for the construction, maintenance, operation, sanitation, or protection of the said canal or of any auxiliary canals, lakes, or other works necessary or convenient for the construction, maintenance, operation, sanitation, or protection of the said canal, the use, occupancy, or control whereof were granted to the United States by the treaty between the United States and the Republic of Panama, the ratifications of which were exchanged on the 26th February, 1904, shall be known and designated as the "Canal Zone" and the canal now being constructed thereon shall hereafter be known and designated as the "Panama Canal." The President is authorized by treaty with the Republic of Panama to acquire any additional land or land under water not already granted, or which was excepted from the grant, that he may deem necessary for the operation, maintenance, sanitation, or protection of the Panama Canal, and to exchange any land or land under water not deemed necessary for such purposes for other land or land under water which may be deemed necessary for such purposes, which additional land or land under water so acquired shall become part of the Canal Zone.

Section 2. That all laws, orders, regulations, and ordinances adopted and promulgated in the Canal Zone by order of the President for the government and sanitation of the Canal Zone and the construction of the Panama Canal are hereby ratified and confirmed as valid and binding until Congress shall otherwise provide. The existing Courts established in the Canal Zone by Executive order are recognized and confirmed to continue in operation until the Courts provided for in this Act shall be established.

Sec. 3. That the President is authorized to declare by Executive order that all land and land under water within the limits of the Canal Zone is necessary for the construction, maintenance, operation, sanitation, or protection of the Panama Canal, and to extinguish, by agreement when advisable, all claims and titles of adverse claimants and occupants. Upon failure to secure by agreement title to any such parcel of land or land under water the adverse claim or occupancy shall be disposed of and title thereto secured in the United States, and compensation therefor fixed and paid in the manner provided in the aforesaid treaty with the Republic of Panama, or such modification of such treaty as may hereafter be made.

Sec. 4. That when in the judgment of the President the construction of the Panama Canal shall be sufficiently advanced toward completion to render the further services of the Isthmian Canal Commission unnecessary the President is authorized by Executive order to discontinue the Isthmian Canal Commission, which, together with the present organization, shall then cease to exist; and the President is authorized thereafter to complete, govern, and operate the Panama Canal and govern the Canal Zone, or cause them to be completed, governed, and operated through a governor of the Panama Canal and such other persons as he may deem competent to discharge the various duties connected with the completion, care, maintenance, sanitation, operation, government, and protection of the canal and Canal Zone. If any of the persons appointed or employed as aforesaid shall be persons in the military or naval service of the United States, the amount of the official salary paid to any such person shall be deducted from the amount of salary or compensation provided by or which shall be fixed under the terms of the Act. The Governor of the Panama Canal shall be appointed by the President, by and with the advice and consent of the Senate, commissioned for a term of four years, and until his successor shall be appointed and qualified. He shall receive a salary of 10,000 dollars a year. All other persons necessary for the completion, care, management, maintenance, sanitation, government, operation, and protection of the Panama Canal and Canal Zone shall be appointed by the President, or by his authority, removable at his pleasure, and the compensation of such persons shall be fixed by the President, or by his authority, until such time as Congress may by law regulate the same; but salaries or compensation fixed hereunder by the President shall in no instance exceed by more than 25 per cent. the salary or compensation paid for the same or similar services to persons employed by the Government in continental United States. That upon the completion of the Panama Canal the President shall cause the same to be officially and formally opened for use and operation.

Before the completion of the canal the Commission of Arts may make report to the President of their recommendation regarding the artistic character of the structures of the canal, such report to be transmitted to Congress.

Sec. 5. That the President is hereby authorized to prescribe and from time to time change the tolls that shall be levied by the Government of the United States for the use of the Panama Canal: Provided that no tolls when prescribed as above shall be changed unless six months' notice thereof shall have been given by the President by Proclamation. No tolls shall be levied upon vessels engaged in the coastwise trade of the United States. That section 4132 of the Revised Statutes is hereby amended to read as follows:—

"Sec. 4132. Vessels built within the United States and belonging wholly to citizens thereof; and vessels which may be captured in war by citizens of the United States, and lawfully condemned as prize, or which may be adjudged to be forfeited for a breach of the laws of the United States; and sea-going vessels, whether steam or sail, which have been certified by the Steamboat Inspection Service as safe to carry dry and perishable cargo, not more than five years old at the time they apply for registry, wherever built, which are to engage only in trade with foreign countries or with the Philippine Islands and the islands of Guam and Tutuila, being wholly owned by citizens of the United States or corporations organized and chartered under the laws of the United States or of any State thereof, the president and managing directors of which shall

be citizens of the United States, and no others, may be registered as directed in this title. Foreign-built vessels registered pursuant to this Act shall not engage in the coastwise trade: Provided that a foreign-built yacht, pleasure-boat, or vessel not used or intended to be used for trade admitted to American registry pursuant to this section shall not be exempt from the collection of *ad valorem* duty provided in section 37 of the Act approved the 5th August, 1909, entitled, 'An Act to provide Revenue, equalize Duties, and encourage the Industries of the United States, and for other Purposes.' That all materials of foreign production which may be necessary for the construction or repair of vessels built in the United States, and all such materials necessary for the building or repair of their machinery, and all articles necessary for their outfit and equipment, may be imported into the United States free of duty under such regulations as the Secretary of the Treasury may prescribe: Provided further that such vessels so admitted under the provisions of this section may contract with the Postmaster-General under the Act of the 3rd March, 1891, entitled, 'An Act to provide for Ocean Mail-service between the United States and Foreign Ports, and to promote Commerce,' so long as such vessels shall in all respects comply with the provisions and requirements of said Act."

Tolls may be based upon gross or net registered tonnage, displacement tonnage, or otherwise, and may be based on one form of tonnage for warships and another for ships of commerce. The rate of tolls may be lower upon vessels in ballast than upon vessels carrying passengers or cargo. When based upon net registered tonnage for ships of commerce the tolls shall not 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, subject, however, to the provisions of Article 19 of the convention between the United States and the Republic of Panama, entered into the 18th November, 1903. If the tolls shall not be based upon net registered tonnage they shall not exceed the equivalent of 1 dol. 25 c. per net registered ton, as nearly as the same may be determined, nor be less than the equivalent of 75 cents per net registered ton. The toll for each passenger shall not be more than 1 dol. 50 cents. The President is authorized to make and from time to time amend regulations governing the operation of the Panama Canal, and the passage and control of vessels through the same or any part thereof, including the locks and approaches thereto, and all rules and regulations affecting pilots and pilotage in the canal or the approaches thereto through the adjacent waters.

Such regulations shall provide for prompt adjustment by agreement and immediate payment of claims for damages which may arise from injury to vessels, cargo, or passengers from the passing of vessels through the locks under the control of those operating them under such rules and regulations. In case of disagreement suit may be brought in the District Court of the Canal Zone against the Governor of the Panama Canal. The hearing and disposition of such cases shall be expedited, and the judgment shall be immediately paid out of any moneys appropriated or allotted for canal operation.

The President shall provide a method for the determination and adjustment of all claims arising out of personal injuries to employees thereafter occurring while directly engaged in actual work in connection with the construction, maintenance, operation, or sanitation of the canal or of the Panama Railroad, or of any auxiliary canals, locks, or other works necessary and convenient for the construction, maintenance, operation, or sanitation of the canal, whether such injuries result in death or not, and prescribe a schedule of compensation therefor, and may revise and modify such method and schedule at any time; and such claims, to the extent they shall be allowed on such adjustment, if allowed at all, shall be paid out of the moneys hereafter appropriated for that purpose or out of the funds of the Panama Railroad Company, if said company was responsible for said injury, as the case may require. And after such method and schedule shall be provided by the President, the provisions of the Act entitled "An Act granting to certain Employees of the United States the Right to receive from it Compensation for Injuries sustained in the Course of their Employment," approved the 30th May, 1908, and of the Act entitled "An Act relating to Injured Employees on the Isthmian Canal," approved the 24th February, 1909, shall not apply to personal injuries thereafter received and claims for which are subject to determination and adjustment as provided in this section.

Sec. 6. That the President is authorized to cause to be erected, maintained, and operated, subject to the International Convention and the Act of Congress to regulate radio-communication, at suitable places along the Panama Canal and the coast adjacent to its two terminals, in connection with the operation of the said canal, such wireless telegraphic installations as he may deem necessary for the operation, maintenance, sanitation, and protection of said canal, and for other purposes. If it is found necessary to locate such installations upon territory of the Republic of Panama, the President is authorized to make such agreement with said Government as may be necessary, and also to provide for the acceptance and transmission, by said system, of all private and commercial messages, and those of the Government of Panama, on such terms and for such tolls as the President may prescribe: Provided that the messages of the Government of the United States and the Departments thereof, and the management of the Panama Canal, shall always be given precedence over all other messages. The President is also authorized, in his discretion, to enter into such operating agreements or leases with any private wireless company or companies as may best ensure freedom from interference with the wireless telegraphic installations established by the United States. The President is also authorized to establish, maintain, and operate, through the Panama Railroad Company or otherwise, dry-docks, repair-shops, yards, docks, wharves, warehouses, storehouses, and other necessary facilities and appurtenances for the purpose of providing coal and other materials, labour, repairs, and supplies for vessels of the Government of the United States, and, incidentally, for supplying such at reasonable prices to passing vessels, in accordance with appropriations hereby authorized to be made from time to time by Congress as a part of the maintenance and operation of the said canal. Moneys received

from the conduct of said business may be expended and reinvested for such purposes without being covered into the Treasury of the United States; and such moneys are hereby appropriated for such purposes, but all deposits of such funds shall be subject to the provisions of existing law relating to the deposit of other public funds of the United States, and any net profits accruing from such business shall annually be covered into the Treasury of the United States. Monthly reports of such receipts and expenditures shall be made to the President by the persons in charge, and annual reports shall be made to the Congress.

Sec. 7. That the Governor of the Panama Canal shall, in connection with the operation of such canal, have official control and jurisdiction over the Canal Zone, and shall perform all duties in connection with the civil government of the Canal Zone, which is to be held, treated, and governed as an adjunct of such Panama Canal. Unless in this Act otherwise provided, all existing laws of the Canal Zone referring to the civil Governor or the civil administration of the Canal Zone shall be applicable to the Governor of the Panama Canal, who shall perform all such executive and administrative duties required by existing law. The President is authorized to determine or cause to be determined what towns shall exist in the Canal Zone, and subdivide and from time to time resubdivide said Canal Zone into subdivisions, to be designated by name or number, so that there shall be situated one town in each subdivision, and the boundaries of each subdivision shall be clearly defined. In each town there shall be a Magistrate's Court with exclusive original jurisdiction coextensive with the subdivision in which it is situated of all civil cases in which the principal sum claimed does not exceed 300 dollars, and all criminal cases wherein the punishment that may be imposed shall not exceed a fine of 100 dollars or imprisonment not exceeding thirty days, or both, and all violations of police regulations and ordinances, and all actions involving possession or title to personal property or the forcible entry and detainer of real estate. Such Magistrates shall also hold preliminary investigations in charges of felony and offences under section 10 of this Act, and commit or bail in bailable cases to the District Court. A sufficient number of Magistrates and constables, who must be citizens of the United States, to conduct the business of such Courts shall be appointed by the Governor of the Panama Canal for terms of four years, and until their successors are appointed and qualified, and the compensation of such persons shall be fixed by the President, or by his authority, until such time as Congress may by law regulate the same. The rules governing said Courts and prescribing the duties of said Magistrates and constables, oaths and bonds, the times and places of holding such Courts, the disposition of fines, costs, forfeitures, enforcements of judgments, providing for appeals therefrom to the District Court, and the disposition, treatment, and pardon of convicts, shall be established by order of the President. The Governor of the Panama Canal shall appoint all notaries public, prescribe their powers and duties, their official seal, and the fees to be charged and collected by them.

Sec. 8. That there shall be in the Canal Zone one District Court with two divisions, one including Balboa and the other including Cristobal; and one District Judge of the said district, who shall hold his Court in both divisions at such time as he may designate by order, at least once a month in each division. The rules of practice in such District Court shall be prescribed or amended by order of the President. The said District Court shall have original jurisdiction of all felony cases; of offences arising under section 10 of this Act; all causes in equity; Admiralty and all cases at law involving principal sums exceeding 300 dollars; and all appeals from judgments rendered in Magistrates' Courts. The jurisdiction in Admiralty herein conferred upon the District Judge and the District Court shall be the same that is exercised by the United States District Judges and the United States District Courts, and the procedure and practice shall also be the same. The District Court or the Judge thereof shall also have jurisdiction of all other matters and proceedings not herein provided for which are now within the jurisdiction of the Supreme Court of the Canal Zone, of the Circuit Court of the Canal Zone, the District Court of the Canal Zone, or the Judges thereof. Said Judges shall provide for the selection, summoning, serving, and compensation of jurors from among the citizens of the United States, to be subject to jury duty in either division of such district, and a jury shall be had in any criminal case or civil case at law originating in said Court on the demand of either party. There shall be a District Attorney and a Marshal for said district. It shall be the duty of the District Attorney to conduct all business, civil and criminal, for the Government, and to advise the Governor of the Panama Canal on all legal questions touching the operation of the canal and the administration of civil affairs. It shall be the duty of the Marshal to execute all process of the Court, preserve order therein, and do all things incident to the office of Marshal. The District Judge, the District Attorney, and the Marshal shall be appointed by the President, by and with the advice and consent of the Senate, for terms of four years each, and until their successors are appointed and qualified, and during their terms of office shall reside within the Canal Zone, and shall hold no other office nor serve on any official Board or Commission, nor receive any emoluments except their salaries. The District Judge shall receive the same salary paid the District Judges of the United States, and shall appoint the Clerk of said Court, and may appoint one assistant when necessary, who shall receive salaries to be fixed by the President. The District Judge shall be entitled to six weeks' leave of absence each year with pay. During his absence, or during any period of disability or disqualification, from sickness or otherwise, to discharge his duties the same shall be temporarily performed by any Circuit or District Judge of the United States who may be designated by the President, and who during such service shall receive the additional mileage and per diem allowed by law to District Judges of the United States when holding Court away from their homes. The District Attorney and the Marshal shall be paid each a salary of 5,000 dollars per annum.

Sec. 9. That the records of the existing Courts, and all causes, proceedings, and criminal prosecutions pending therein as shown by the dockets thereof, except as herein otherwise pro-

vided, shall immediately upon the organization of the Courts created by this Act be transferred to such new Courts having jurisdiction of like cases, be entered upon the dockets thereof, and proceed as if they had originally been brought therein, whereupon all the existing Courts, except the Supreme Court of the Canal Zone, shall cease to exist. The President may continue the Supreme Court of the Canal Zone and retain the Judges thereof in office for such time as to him may seem necessary to determine finally any causes and proceedings which may be pending therein. All laws of the Canal Zone imposing duties upon the Clerks or ministerial officers of existing Courts shall apply and impose such duties upon the Clerks and ministerial officers of the new Courts created by this Act having jurisdiction of like cases, matters, and duties.

All existing laws in the Canal Zone governing practice and procedure in existing Courts shall be applicable and adapted to the practice and procedure in the new Courts.

The Circuit Court of Appeals of the Fifth Circuit of the United States shall have jurisdiction to review, revise, modify, reverse, or affirm the final judgments and decrees of the District Court of the Canal Zone, and to render such judgments as in the opinion of the said Appellate Court should have been rendered by the trial Court in all actions and proceedings in which the constitution, or any statute, treaty, title, right, or privilege of the United States is involved and a right thereunder denied, and in cases in which the value in controversy exceeds 1,000 dollars, to be ascertained by the oath of either party, or by other competent evidence, and also in criminal causes wherein the offence charged is punishable as a felony. And such appellate jurisdiction, subject to the right of review by or appeal to the Supreme Court of the United States as in other cases authorized by law, may be exercised by said Circuit Court of Appeals in the same manner, under the same regulations, and by the same procedure as nearly as practicable as is done in reviewing the final judgments and decrees of the District Courts of the United States.

Sec. 10. That after the Panama Canal shall have been completed and opened for operation the Governor of the Panama Canal shall have the right to make such rules and regulations, subject to the approval of the President, touching the right of any person to remain upon or pass over any part of the Canal Zone as may be necessary. Any person violating any of such rules or regulations shall be guilty of a misdemeanour, and on conviction in the District Court of the Canal Zone shall be punished by a fine not exceeding 500 dollars, or by imprisonment not exceeding a year, or both, in the discretion of the Court. It shall be unlawful for any person, by any means or in any way, to injure or obstruct, or attempt to injure or obstruct, any part of the Panama Canal, or the locks thereof, or the approaches thereto. Any person violating this provision shall be guilty of a felony, and on conviction in the District Court of the Canal Zone shall be punished by a fine not exceeding 10,000 dollars, or by imprisonment not exceeding twenty years, or both, in the discretion of the Court. If the act shall cause the death of any person within a year and a day thereafter, the person so convicted shall be guilty of murder and shall be punished accordingly.

Sec. 11. That section 5 of the Act to regulate commerce, approved the 4th February, 1887, as heretofore amended, is hereby amended by adding thereto a new paragraph at the end thereof, as follows:—

“From and after the 1st day of July, 1914, it shall be unlawful for any railroad company or other common carrier subject to the Act to regulate commerce, to own, lease, operate, control, or have any interest whatsoever (by stock ownership or otherwise, either directly, indirectly, through any holding company, or by stockholders or directors in common, or in any other manner) in any common carrier by water operated through the Panama Canal or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic, or any vessel carrying freight or passengers upon said water route or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic; and in case of the violation of this provision each day in which such violation continues shall be deemed a separate offence.”

Jurisdiction is hereby conferred on the Inter-State Commerce Commission to determine questions of fact as to the competition or possibility of competition, after full hearing, on the application of any railroad company or other carrier. Such application may be filed for the purpose of determining whether any existing service is in violation of this section, and pray for an order permitting the continuance of any vessel or vessels already in operation, or for the purpose of asking an order to install new service not in conflict with the provisions of this paragraph. The Commission may on its own motion or the application of any shipper institute proceedings to inquire into the operation of any vessel in use by any railroad or other carrier which has not applied to the Commission and had the question of competition or the possibility of competition determined as herein provided. In all such cases the order of said Commission shall be final.

If the Inter-State Commerce Commission shall be of the opinion that any such existing specified service by water other than through the Panama Canal is being operated in the interest of the public, and is of advantage to the convenience and commerce of the people, and that such extension will neither exclude, prevent, nor reduce competition on the route by water under consideration, the Inter-State Commerce Commission may, by order, extend the time during which such service by water may continue to be operated beyond the 1st July, 1914. In every case of such extension the rates, schedules, and practices of such water carrier shall be filed with the Inter-State Commerce Commission, and shall be subject to the Act to regulate commerce and all amendments thereto in the same manner and to the same extent as is the railroad or other common carrier controlling such water carrier or interested in any manner in its operation: Provided any application for extension under the terms of this provision filed with the Inter-State Commerce Commission prior to the 1st July, 1914, but for any reason not heard and disposed of before said date, may be considered and granted thereafter.

No vessel permitted to engage in the coastwise or foreign trade of the United States shall be permitted to enter or pass through said canal if such ship is owned, chartered, operated, or

controlled by any person or company which is doing business in violation of the provisions of the Act of Congress approved the 2nd July, 1890, entitled "An Act to protect Trade and Commerce against Unlawful Restraints and Monopolies," or the provisions of sections 73-77, both inclusive, of an Act approved the 27th August, 1894, entitled "An Act to reduce Taxation, to provide Revenue for the Government, and for other Purposes," or the provisions of any other Act of Congress amending or supplementing the said Act of the 2nd July, 1890, commonly known as the Sherman Anti-Trust Act, and amendments thereto, or said sections of the Act of the 27th August, 1894. The question of fact may be determined by the judgment of any Court of the United States of competent jurisdiction in any cause pending before it to which the owners or operators of such ship are parties. Suit may be brought by any shipper or by the Attorney-General of the United States.

That section 6 of said Act to regulate commerce, as heretofore amended, is hereby amended by adding a new paragraph at the end thereof as follows:—

"When property may be or is transported from point to point in the United States by rail and water through the Panama Canal or otherwise, the transportation being by a common carrier or carriers, and not entirely within the limits of a single State, the Inter-State Commerce Commission shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the following particulars, in addition to the jurisdiction given by the Act to regulate commerce, as amended the 18th June, 1910:—

"(a.) To establish physical connection between the lines of the rail carrier and the dock of the water carrier by directing the rail carrier to make suitable connection between its line and a track or tracks which have been constructed from the dock to the limits of its right of way, or by directing either or both the rail and water carrier, individually or in connection with one another, to construct and connect with the lines of the rail carrier a spur track or tracks to the dock. This provision shall only apply where such connection is reasonably practicable, can be made with safety to the public, and where the amount of business to be handled is sufficient to justify the outlay.

"The Commission shall have full authority to determine the terms and conditions upon which these connecting tracks, when constructed, shall be operated, and it may, either in the construction or the operation of such tracks, determine what sum shall be paid to or by either carrier. The provisions of this paragraph shall extend to cases where the dock is owned by other parties than the carrier involved.

"(b.) To establish through routes and maximum joint rates between and over such rail and water lines, and to determine all the terms and conditions under which such lines shall be operated in the handling of the traffic embraced.

"(c.) To establish maximum proportional rates by rail to and from the ports to which the traffic is brought, or from which it is taken by the water carrier, and to determine to what traffic and in connection with what vessels and upon what terms and conditions such rates shall apply. By 'proportional rates' are meant those which differ from the corresponding local rates to and from the port, and which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water.

"(d.) If any rail carrier, subject to the Act to regulate commerce, enters into arrangements with any water carrier operating from a port in the United States to a foreign country, through the Panama Canal or otherwise, for the handling of through business between interior points of the United States and such foreign country, the Inter-State Commerce Commission may require such railway to enter into similar arrangements with any or all other lines of steamships operating from said port to the same foreign country."

The orders of the Inter-State Commerce Commission relating to this section shall only be made upon formal complaint or in proceedings instituted by the Commission of its own motion and after full hearing. The orders provided for in the two amendments to the Act to regulate commerce enacted in this section shall be served in the same manner and enforced by the same penalties and proceedings as are the orders of the Commission made under the provisions of section 15 of the Act to regulate commerce, as amended the 18th June, 1910, and they may be conditioned for the payment of any sum, or the giving of security for the payment of any sum, or the discharge of any obligation which may be required by the terms of said order.

Sec. 12. That all laws and treaties relating to the extradition of persons accused of crime in force in the United States, to the extent that they may not be in conflict with or superseded by any special treaty entered into between the United States and the Republic of Panama with respect to the Canal Zone, and all laws relating to the rendition of fugitives from justice as between the several States and territories of the United States, shall extend to and be considered in force in the Canal Zone, and for such purposes and such purposes only the Canal Zone shall be considered and treated as an organized territory of the United States.

Sec. 13. That in time of war in which the United States shall be engaged, or when, in the opinion of the President, war is imminent, such officer of the Army as the President may designate shall, upon the order of the President, assume and have exclusive authority and jurisdiction over the operation of the Panama Canal and all of its adjuncts, appendants, and appurtenances, including the entire control and government of the Canal Zone, and during the continuance of such condition the Governor of the Panama Canal shall, in all respects and particulars as to the operation of such Panama Canal, and all duties, matters, and transactions affecting the Canal Zone, be subject to the order and direction of such officer of the Army.

Sec. 14. That this Act shall be known as, and referred to as, the Panama Canal Act, and the right to alter, amend, or repeal any or all of its provisions, or to extend, modify, or annul any rule or regulation made under its authority, is expressly reserved.

Approved the 24th August, 1912.

APPENDIX II.

Memorandum to accompany the Panama Canal Act.

IN signing the Panama Canal Bill, I wish to leave this memorandum. The Bill is admirably drawn for the purpose of securing the proper maintenance, operation, and control of the canal, and the government of the Canal Zone, and for the furnishing to all the patrons of the canal, through the Government, of the requisite docking facilities and the supply of coal and other shipping necessities. It is absolutely necessary to have the Bill passed at this session in order that the capitals of the world engaged in the preparation of ships to use the canal may know in advance the conditions under which the traffic is to be carried on through this waterway.

I wish to consider the objections to the Bill in the order of their importance.

1. The Bill is objected to because it is said to violate the Hay-Pauncefote Treaty in discriminating in favour of the coastwise trade of the United States by providing that no tolls shall be charged to vessels engaged in that trade passing through the canal. This is the subject of a protest by the British Government.

The British protest involves the right of the Congress of the United States to regulate its domestic and foreign commerce in such manner as to the Congress may seem wise, and specifically the protest challenges the right of the Congress to exempt American shipping from the payment of tolls for the use of the Panama Canal or to refund to such American ships the tolls which they may have paid, and this without regard to the trade in which such ships are employed, whether coastwise or foreign. The protest states "the proposal to exempt all American shipping from the payment of the tolls would, in the opinion of His Majesty's Government, involve an infraction of the treaty (Hay-Pauncefote), nor is there, in their opinion, any difference in principle between charging tolls only to refund them and remitting tolls altogether. The result is the same in either case, and the adoption of the alternative method of refunding tolls in preference of remitting them, while perhaps complying with the letter of the treaty, would still controvert its spirit." The provision of the Hay-Pauncefote Treaty involved is contained in Article 3, which provides:—

"The United States adopts, as the basis of the neutralization of such ship-canal, the following rules, substantially as embodied in the convention of Constantinople, signed the 28th October, 1888, for the free navigation of the Suez Canal, that is to say,—

"1. The canal shall be free and open to the vessels of commerce and of war of all nations observing these rules, on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens or subjects, in respect of the conditions or charges of traffic or otherwise. Such conditions and charges of traffic shall be just and equitable."

Then follow five other rules to be observed by other nations to make neutralization effective, the observance of which is the condition for the privilege of using the canal.

In view of the fact that the Panama Canal is being constructed by the United States wholly at its own cost, upon territory ceded to it by the Republic of Panama for that purpose, and that, unless it has restricted itself, the United States enjoys absolute rights of ownership and control, including the right to allow its own commerce the use of the canal upon such terms as it sees fit, the sole question is, Has the United States, in the language above quoted from the Hay-Pauncefote Treaty, deprived itself of the exercise of the right to pass its own commerce free or to remit tolls collected for the use of the canal?

It will be observed that the rules specified in Article 3 of the treaty were adopted by the United States for a specific purpose—namely, as the basis of the neutralization of the canal, and for no other purpose. The article is a declaration of policy by the United States that the canal shall be neutral; that the attitude of this Government towards the commerce of the world is that all nations will be treated alike, and no discrimination made by the United States against any one of them observing the rules adopted by the United States. The right to the use of the canal and to equality of treatment in the use depends upon the observance of the conditions of the use by the nations to whom we extended that privilege. The privileges of all nations to whom we extended the use upon the observance of these conditions were to be equal to that extended to any of them which observed the conditions. In other words, it was a conditional favoured-nation treatment, the measure of which, in the absence of express stipulation to that effect, is not what the country gives to its own nationals, but the treatment it extends to other nations.

Thus it is seen that the rules are but a basis of neutralization, intended to effect the neutrality which the United States was willing should be the character of the canal, and not intended to limit or hamper the United States in the exercise of its sovereign power to deal with its own commerce, using its own canal in whatsoever manner it saw fit.

If there is no "difference in principle between the United States charging tolls to its own shipping only to refund them and remitting tolls altogether, as the British protest declares, then the irresistible conclusion is that the United States, although it owns, controls, and has paid for the canal, is restricted by treaty from aiding its own commerce in the way that all the other nations of the world may freely do. It would scarcely be claimed that the setting-out in a treaty between the United States and Great Britain of certain rules adopted by the United States as the basis of the neutralization of the canal would bind any Government to do or refrain from doing anything other than the things required by the rules to ensure the privilege of use and freedom from discrimination. Since the rules do not provide as a condition for the privilege of use upon equal terms with other nations that other nations desiring to build up a particular trade involving the use of the canal shall not either directly agree to pay the tolls or to refund to its ships the tolls collected for the use of the canal, it is evident that the treaty does not affect that inherent sovereign right, unless, which is not likely, it be claimed that the promulgation by the United States of these rules ensuring all nations against its discrimination would autho-

size the United States to pass upon the action of other nations, and require that no one of them should grant to its shipping larger subsidies or more liberal inducement for the use of the canal than were granted by others—in other words, that the United States has the power to equalize the practice of other nations in this regard.

If it is correct, then, to assume that there is nothing in the Hay-Pauncefote Treaty preventing Great Britain and the other nations from extending such favours as they may see fit to their shipping using the canal, and doing it in the way they see fit, and if it is also right to assume that there is nothing in the treaty that gives the United States any supervision over, or right to complain of, such action, then the British protest leads to the absurd conclusion that this Government in constructing the canal, maintaining the canal, and defending the canal, finds itself shorn of its right to deal with its own commerce in its own way, while all other nations using the canal in competition with American commerce enjoy that right and power unimpaired.

The British protest, therefore, is a proposal to read into the treaty a surrender by the United States of its right to regulate its own commerce in its own way and by its own methods—a right which neither Great Britain herself, nor any other nation that may use the canal, has surrendered or proposes to surrender. The surrender of this right is not claimed to be in terms. It is only to be inferred from the fact that the United States has conditionally granted to all the nations the use of the canal without discrimination by the United States between the grantees; but as the treaty leaves all nations desiring to use the canal with full right to deal with their own vessels as they see fit, the United States would only be discriminating against itself if it were to recognize the soundness of the British contention.

The Bill here in question does not positively do more than to discriminate in favour of the coastwise trade, and the British protest seems to recognize a distinction between such exemption and the exemption of American vessels engaged in foreign trade. In effect, of course, there is a substantial and practical difference. The American vessels in foreign trade come into competition with vessels of other nations in that same trade, while foreign vessels are forbidden to engage in the American coastwise trade. While the Bill here in question seems to vest the President with discretion to discriminate in fixing tolls in favour of American ships and against foreign ships engaged in foreign trade, within the limitation of the range from 50 cents a ton to 1 dol. 25 c. a net ton, there is nothing in the Act to compel the President to make such a discrimination. 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.

The policy of exempting the coastwise trade from all tolls really involves the question of granting a Government subsidy for the purpose of encouraging that trade in competition with the trade of the transcontinental railroads. I approve this policy. It is in accord with the historical course of the Government in giving Government aid to the construction of the transcontinental roads. It is now merely giving Government aid to a means of transportation that competes with those transcontinental roads.

2. The Bill permits the registry of foreign-built vessels as vessels of the United States for foreign trade, and it also permits the admission without duty of materials for the construction and repair of vessels in the United States. This is objected to on the ground that it will interfere with the shipbuilding interests of the United States. I cannot concur in this view. The number of vessels of the United States engaged in foreign trade is so small that the work done by the present shipyards is almost wholly that of constructing vessels for the coastwise trade or Government vessels. In other words, there is substantially no business for building ships in the foreign trade in the shipyards of the United States which will be injured by this new provision. It is hoped that this registry of foreign-built ships in American foreign trades will prove to be a method of increasing our foreign shipping. The experiment will hurt no interest of ours, and we can observe its operation. If it proves to extend our commercial flag to the high seas it will supply a long-felt want.

3. Section 5 of the Inter-State Commerce Act is amended by forbidding railroad companies to own, lease, operate, control, or have any interest in any common carrier by water operated through the Panama Canal with which such railroad or other carrier does or may compete for traffic. I have twice recommended such restriction as to the Panama Canal. It was urged upon me that the Inter-State Commerce Commission might control the trade so as to prevent an abuse from the joint ownership of railroads and of Panama steamships competing with each other, and therefore that this radical provision was not necessary. Conference with the Inter-State Commerce Commission, however, satisfied me that such control would not be as effective as this restriction. The difficulty is that the interest of the railroad company is so much larger in its railroad and in the maintenance of its railroad rates than in making a profit out of the steamship line that it can afford temporarily to run its vessels for nearly nothing in order to drive out of the business independent steamship lines, and thus obtain complete control of the shipping in the trade through the canal and regulate the rates according to the interest of the railroad company. Jurisdiction is conferred on the Inter-State Commerce Commission finally to determine the question of fact as to the competition or possibility of competition of the water carrier with the railroad, and this may be done in advance of any investment of capital.

4. The effect of the amendment of section 3 of the Inter-State Commerce Act also is extended so as to make it unlawful for railroad companies owning or controlling lines of steamships in any other part of the jurisdiction of the United States to continue to do so, and as to such railroad companies and such water carriers the Inter-State Commerce Commission is given the duty and power not only finally to determine the question of competition or possibility of competition, but also to determine "that the specified service by water is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that such extension will neither exclude, prevent, nor reduce competition on the route by water under con-

sideration"; and, if it finds this to be the case, to extend the time during which such service by water may continue beyond the date fixed in the Act for its first operation—to wit, the 1st July, 1914. Whenever the time is extended, then the water carrier, its rates and schedules, and practices, are brought within the control of the Inter-State Commerce Commission. How far it is within the power of Congress to delegate to the Inter-State Commerce Commission such wide discretion it is unnecessary now to discuss. There is ample time between now and the time of this provision of the Act's going into effect to have the matter examined by the Supreme Court, or to change the form of the legislation, should it be deemed necessary. Certainly the suggested invalidity of this section, if true, would not invalidate the entire Act, the remainder of which may well stand without regard to this provision.

5. The final objection is to a provision which prevents the owner of any steamship who is guilty of violating the anti-trust law from using the canal. It is quite evident that this section applies only to those vessels engaged in the trade in which there is a monopoly contrary to our Federal statute, and it is a mere injunctive process against the continuance of such monopolistic trade. It adds the penalty of denying the use of the canal to a person or corporation violating the anti-trust law. It may have some practical operation where the business monopolized its transportation by ships, but it does not become operative to prevent the use of the canal until the decree of the Court shall have established the fact of the guilt of the owner of the vessel. While the penalties of the anti-trust law seem to me to be quite sufficient already, I do not know that this new remedy against a particular kind of a trust may not sometimes prove useful.

In a message sent to Congress after this Bill had passed both Houses I ventured to suggest a possible amendment by which all persons, and especially all British subjects who felt aggrieved by the provisions of the Bill on the ground that they are in violation of the Hay-Pauncefote Treaty, might try that question out in the Supreme Court of the United States. I think this would have satisfied those who oppose the view which Congress evidently entertains of the treaty; and might avoid the necessity for either diplomatic negotiation or further decision by an arbitral tribunal. Congress, however, has not thought it wise to accept the suggestion, and therefore I must proceed in the view which I have expressed, and am convinced is the correct one, as to the proper construction of the treaty and the limitations which it imposes upon the United States. I do not find that the Bill here in question violates those limitations.

On the whole, I believe the Bill to be one of the most beneficial that has passed this or any other Congress, and I find no reason in the objections made to the Bill which would lead me to delay, until another session of Congress, provisions that are imperatively needed now in order that due preparation by the world may be made for the opening of the canal.

The White House, 24th August, 1912.

WM. H. TAFT.

New Zealand, No. 384.

SIR,—

Downing Street, 19th December, 1912.

With reference to previous correspondence, I have the honour to transmit to you, for the information of your Ministers, the accompanying copy of a Proclamation by the President of the United States dated the 13th November, 1912, prescribing the rates of toll to be paid by vessels using the Panama Canal.

I have, &c.,

The Officer administering the Government of New Zealand.

L. HARCOURT.

PANAMA CANAL TOLL RATES.

By the President of the United States of America.

A PROCLAMATION.

I, WILLIAM HOWARD TAFT, President of the United States of America, by virtue of the power and authority vested in me by the Act of Congress, approved the 24th August, 1912, to provide for the opening, maintenance, protection, and operation of the Panama Canal, and the sanitation and government of the Canal Zone, do hereby prescribe and proclaim the following rates of toll to be paid by vessels using the Panama Canal:—

1. On merchant vessels carrying passengers or cargo, 1 dol 20 c. per net vessel ton—each 100 cubic feet—of actual earning-capacity.
2. On vessels in ballast without passengers or cargo, 46 per cent. less than the rate of tolls for vessels with passengers or cargo.
3. Upon naval vessels, other than transports, colliers, hospital ships, and supply ships, 50 cents for displacement ton.
4. Upon army and navy transports, colliers, hospital ships, and supply ships, 1 dol. 20 c. per net ton, the vessels to be measured by the same rules as are employed in determining the net tonnage of merchant vessels.

The Secretary of War will prepare and prescribe such rules for the measurement of vessels and such regulations as may be necessary and proper to carry this Proclamation into full force and effect.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington, this 13th day of November, 1912, and of the independence of the United States the 137th.

By the President.—P. C. KNOX, Secretary of State.

WM. H. TAFT.

New Zealand, No. 25.

MY LORD,—

Downing Street, 10th January, 1913.

I have the honour to transmit to you, for the information of your Ministers, a copy of a despatch from His Majesty's representative at Panama furnishing information as to some of the permanent projects for the future facilities at the Atlantic and Pacific entrances to the Panama Canal.

I have, &c.,

Governor the Right Hon. the Earl of Liverpool, &c.

L. HARCOURT.

Sir C. MALLET to Sir EDWARD GREY.

(Received in Colonial Office, 18th December, 1912.)

(No. 33.—Commercial.)

SIR,—

British Legation, Panama, 8th November, 1912.

I have the honour to transmit herein a cutting from the *Canal Record*, the official organ of the Isthmian Canal Commission, describing some of the permanent projects for the future facilities at the Atlantic and Pacific entrances to the Panama Canal.

In addition to the steel wharf, 1,000 ft. long, built by the French Canal Company at Balboa (Pacific terminus), one pier is to be constructed for the present with a length of 1,000 ft. and a width of 200 ft., for commercial purposes.

Two wharves and one pier are actually under construction at Christobal (Atlantic terminus), 1,000 ft. long and 209 ft. wide, each wharf. These wharves will be added to should there be enough traffic after the canal is completed to justify it.

The main dry-dock is to be at Balboa, and will be large enough to accommodate any vessel that can pass through the canal locks, and a 40-ton locomotive crane will form part of its equipment. There will also be a smaller dry-dock 350 ft. in length for vessels of a smaller type.

The old French dry-dock at Mount Hope, on the Atlantic, is to be retained. It has a usable length of 300 ft., and a width entrance of 50 ft., and a depth over the sill of 13 ft. at mean sea-level.

Fuel, fresh water, and supplies of all kinds are contemplated in the plans. The main coaling-station will be at Christobal, where 200,000 tons of coal can be stored, with a possible increase of 50 per cent.; 100,000 tons of the total normal storage is subaqueous. There will be a subsidiary coaling plant at Balboa, capable of handling 100,000 tons of coal, with a possible increase of 50 per cent.

Facilities will also be provided at Christobal and Balboa for the supply of fuel-oil, and steel tanks for the storage of 160,000 barrels have been ordered in the United States.

The main repair-shops are to be at Balboa, and are designed to maintain—(1) Lock, spillway, and power-plant machinery; (2) water and land equipment retained for the maintenance of the canal; (3) rolling-stock and equipment of the Panama Railway; (4) mechanical apparatus connected with the coaling plants, fortifications, cold-storage plant, wireless stations, &c.; (5) the making of repairs, &c., required by commercial vessels and by private corporations and individuals; (6) the making of such repairs as may be required by vessels of the United States Navy. All the machinery will be electric-driven.

The dry-dock shops for making repairs on the Atlantic side will be retained until experience shows the extent and character of repair facilities necessary.

The floating equipment is also provided for as regards tugs, floating cranes for wrecking purposes, and barges and lighters to supply coal, fuel-oil, and fresh water alongside vessels.

I have, &c.,

C. MALLET.

[Enclosure.]

PERMANENT PROJECTS.

Description of Future Facilities at Atlantic and Pacific Entrances.

The permanent facilities at the Atlantic and Pacific entrances to the canal will include the following projects:—

Piers.

The piers for commercial use at Balboa will be built at right angles to the axis of the canal, with their ends about 2,650 ft. from the centre-line of the canal channel. They will be about 1,000 ft. long, and 200 ft. wide, with 300 ft. slips between, and with landings for small boats at the head of each slip for the full width between piers. The construction of one pier only will be undertaken at first. The old French steel wharf, about 1,000 ft. long, will be retained for some time in the future for commercial purposes.

Two wharves and one pier are under construction at Christobal, behind a mole and break-water, built out from shore toward the canal channel, and paralleling the boundary-line between Canal Zone and Panamanian waters. An article on these docks, including their superstructures and cargo-handling appliances, was published in the *Canal Record* of the 16th October, 1912. Primarily, these docks are to meet the commercial requirements of the Panama railroad, but should there be enough traffic after the canal is completed to justify it, four other piers, each about 1,000 ft. long and 209 ft. wide, with 300 ft. slips between, will be constructed.

Dry-docks.

The main dry-dock will be situated at Balboa, and will be capable of accommodating any vessel that can pass through the canal locks. It will have a usable length of 1,000 ft., a depth over the keel-blocks of 35 ft. at mean sea-level, and an entrance width of 110 ft. The entrance will be closed by mitre gates similar to those used in the locks. The dry-dock will have a rock foundation, and its sides will be lined with concrete. Its equipment will include a 40-ton locomotive train, with a travel on both sides.

For vessels of smaller type an auxiliary dry-dock will be built at Balboa, in lieu of the marine railways originally contemplated. It will have a usable length of 350 ft., a width at entrance of 71 ft., and a depth over the keel-blocks of 13½ ft. at mean sea-level. It will be provided with a floating caisson. The 40-ton locomotive crane on the main dry-dock will be utilized for this dock also. The work of providing space for these dry-docks, as well as for the new shops, is now under way, and requires the excavation of about 300,000 cubic yards of material from the north-west face of Sosa Hill. The excavated material is used in filling the site for the shops and terminal yard.

On the Atlantic side it is proposed to retain the old French dry-dock at Mount Hope, which has a usable length of 300 ft., a width at entrance of 50 ft., and a depth over the sill of 13 ft. at mean sea-level. It was the opinion of the Board in charge of the dock projects that the commercial requirements in sight would not warrant the construction of a dry-dock at Christobal capable of accommodating large vessels, in view of the building of a dry-dock at Balboa, to which any large vessel on the Atlantic side could be taken and returned, in case it was found necessary to dock it for repairs.

Coaling Plants.

The plans contemplate furnishing vessels with fuel, fresh water, and supplies of all kinds. The main coaling plant will be situated on the north end of the island, opposite deck No. 11, Christobal. It will be capable of handling and storing 200,000 tons of coal, with a possible increase of 50 per cent.; 100,000 tons of the total normal storage is subaqueous. The plant will have railroad connection with the mainland over a bridge of the bascule type, which will cross the French canal at a point about half a mile south of the Mount Hope dry-dock. The preliminary work on this plant has been begun by the Panama Railroad.

A subsidiary coaling plant will be situated at Balboa, at the outer end of the south-east approach wall of the dry-dock, having a frontage of 500 ft. thereon, adapted for discharging vessels. This plant will be capable of handling and storing 100,000 tons of coal, with a possible increase of 50 per cent.; 50,000 tons of the total normal storage is subaqueous.

Fuel-oil Supply.

In addition to coal, facilities will be provided at Christobal and Balboa for supplying shipping and the canal works with fuel oil. In line with this plan, four steel tanks of 40,000 barrels capacity each have been contracted for recently in the United States. A brief description of these tanks was published in the *Canal Record* of the 9th October, 1912.

Shops.

The main repair-shops will be built at Balboa, and are designed to maintain the following equipment: (1) Lock, spillway, and power-plant machinery; (2) water and land equipment retained for the maintenance of the canal; (3) rolling-stock and equipment of the Panama Railroad; (4) mechanical apparatus connected with the coaling plants, fortifications, cold-storage plant, wireless stations, &c.; (5) the making of repairs, &c., required by commercial vessels, and by private individuals and corporations; (6) the making of such repairs as may be required by vessels of the United States Navy.

The approximate floor-area of the principal shop buildings will be as follows:—

Building.	Area. Sq. Ft.
Machine, erecting, and tool shop	68,400
Forge-shop	32,400
Steel-storage shed	18,080
Boiler and shipfitters' shop	46,800
General storehouse	96,000
Paint-shop	12,760
Car-shop	38,800
Planing-mill, carpenter, and pattern shop	49,000
Galvanizing-shop	5,620
Lumber and equipment store shed	67,060
Steel, iron, and brass foundry	37,600
Coke-shed	3,070
Boilerhouse	2,500
Pattern-storage building	14,400
Round-house	24,000
Office building	9,500
Total	525,990

In addition to the above, a number of subsidiary buildings will be erected. All of the structures will be of permanent construction, with steel frames. The sides and ends will be left open for ventilation and light, protection from sun and rain being afforded by overhanging sheds.

The main metal-working shops, including machine, erecting, and tool shops, the forge and pipe shop, and the boiler and shipfitters' shop, together with the shed for the storage of steel, will be placed end on between the dry-dock and repair-wharf. The general storehouse, foundry, woodworking shops, subsidiary buildings, and office building will be built parallel to the line of the dry-dock and water-front, north-east of the main shops. Two lines of railroad-tracks will extend past each end of the main metal-working shops, and one track through their centre. The main shops will be provided with overhead travelling cranes, the crane runaways being extended through each end of the buildings over the railroad-track. As far as possible, the present machinery will be utilized in the new shops. All of it will be electric-driven, including both individual and group drive.

It is proposed to retain the dry-dock shops, for making repairs on the Atlantic side, until sufficient experience is had to determine the extent and character of repair facilities necessary.

Floating Equipment.

For the handling of the lock-gate leaves, as well as for other canal requirements and commercial and general working purposes, one or two powerful floating cranes will be purchased. For handling vessels of the largest size at Christobal and Balboa two high-power harbour tugs will be provided, and for the transportation of coal, fuel oil, and fresh water alongside of vessels a sufficient number of barges and lighters will be placed in service. The steel barges now in use by the Canal Commission can be used to good advantage, after the necessary modifications have been made, in the barge and lighter service. A tender for passengers and mail will be furnished at each terminus also, provided the business justifies it.

New Zealand, No. 39.

MY LORD,—

Downing Street, 17th January, 1913.

With reference to my despatch, No. 384, of the 19th December last, forwarding copy of a Proclamation issued by the President of the United States of America prescribing the rates of toll to be paid by vessels using the Panama Canal, I have the honour to request you to inform your Ministers that His Majesty's Ambassador at Washington has been instructed to send you direct copies of a report by Professor Emory Johnson on Panama Canal traffic and tolls, on which the schedule of tolls embodied in the President's Proclamation is stated by the Government of the United States to have been based.

I have, &c.,

Governor the Right Hon. the Earl of Liverpool, &c.

L. HARCOURT.

New Zealand, No. 47.

MY LORD,—

Downing Street, 24th January, 1913.

With reference to my despatch, No. 376, of the 12th December, I have the honour to transmit to you, for the information of your Ministers, two copies of a parliamentary paper containing the text of a despatch from the Secretary of State at Washington to the United States Chargé d'Affaires respecting the Panama Canal Act, which was communicated to His Majesty's Secretary for Foreign Affairs on the 20th instant.

I have, &c.,

Governor the Right Hon. the Earl of Liverpool, &c.

L. HARCOURT.

DESPATCH FROM SECRETARY OF STATE AT WASHINGTON TO THE UNITED STATES CHARGE D'AFFAIRES RESPECTING THE PANAMA CANAL ACT, COMMUNICATED TO HIS MAJESTY'S SECRETARY OF STATE FOR FOREIGN AFFAIRS, 20TH JANUARY, 1913.

SIR,—

Department of State, Washington, 17th January, 1913.*

I enclose a copy of an instruction from Sir Edward Grey to His Britannic Majesty's Ambassador at Washington, dated the 14th November, 1912, a copy of which was handed to me by the Ambassador on the 9th ultimo, in which certain provisions in the Panama Canal Act of the 24th August last are discussed in their relation to the Hay-Pauncefote Treaty concluded the 18th November, 1901; and I also enclose a copy of the note addressed to me on the 8th July, 1912, by Mr. A. Mitchell Innes, His Britannic Majesty's Chargé d'Affaires, stating the objections which his Government entertained to the legislation relating to the Panama Canal, which was then under discussion in Congress. A copy of the President's Proclamation of the 13th November, 1912, fixing the canal tolls, is also enclosed.

Sir Edward Grey's communication, after setting forth the several grounds upon which the British Government believe the provisions of the Act are inconsistent with the stipulations of the Hay-Pauncefote Treaty, states the readiness of his Government "to submit the question to arbitration if the Government of the United States would prefer to take this course" rather than to take such steps as would remove the objections to the Act which His Majesty's Government have stated. It therefore becomes necessary for this Government to examine these objections, in order to ascertain exactly in what respects this Act is regarded by the British Government as inconsistent with the provisions of that treaty, and also to explain the views of this Government upon the questions thus presented, and to consider the advisability at this time of submitting any of these questions to arbitration.

* This despatch was cabled to the United States Chargé d'Affaires for communication to Sir E. Grey.

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

of war and other vessels engaged in the service of this Government. Great Britain does not challenge the right of the United States to protect the canal. United States vessels of war and those employed in Government service are a part of our protective system. By the Hay-Pauncefote Treaty we assume the sole responsibility for its neutralization. It is inconceivable that this Government should be required to pay canal tolls for the vessels used in protecting the canal, which we alone must protect. The movements of United States vessels in executing governmental policies of protection are not susceptible of explanation or differentiation. The United States could not be called upon to explain what relation the movement of a particular vessel through the canal has to its protection. The British objection, therefore, is understood as having no relation to the use of the canal by vessels in the service of the United States Government.

Regarding the first objection, the question presented by Sir Edward Grey arises solely upon the exemption in the Canal Act of vessels engaged in our coastwise trade.

On this point Sir Edward Grey says that "His Majesty's Government do not question the right of the United States to grant subsidies to United States shipping generally, or to any particular branches of that shipping," and it is admitted in his note that the exemption of certain classes of ships would be "a form of subsidy" to those vessels; but it appears from the note that His Majesty's Government would regard that form of subsidy as objectionable under the treaty if the effect of such subsidy would be "to impose upon British or other foreign shipping an unfair share of the burden of the upkeep of the canal, or to create a discrimination in respect of the conditions or charges of traffic, or otherwise to prejudice rights secured to British shipping by this treaty."

It is not contended by Great Britain that equality of treatment has any reference to British participation in the coastwise trade of the United States, which, in accordance with general usage, is reserved to American ships. The objection is only to such exemption of that trade from toll payments as may adversely affect British rights to equal treatment in the payment of tolls, or to just and equitable tolls. It will be helpful here to recall that we are now only engaged in considering (quoting from Sir Edward Grey's note) "whether the Panama Canal Act in its present form conflicts with the treaty rights to which His Majesty's Government maintain they are entitled," concerning which he includes Colombian war-vessels.

"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."

On the first of these points the objection of the British Government to the exemption of vessels engaged in the coastwise trade of the United States is stated as follows:—

"The exemption will, in the opinion of His Majesty's Government, be a violation of the equal treatment secured by the treaty, as it will put the 'coastwise trade' in a preferential position as regards other shipping. Coastwise trade cannot be circumscribed so completely that benefits conferred upon it will not affect vessels engaged in the foreign trade. To take an example, if cargo intended for a United States port beyond the canal, either from east or west, and shipped on board a foreign ship, could be sent to its destination more cheaply, through the operation of the proposed exemption, by being landed at a United States port before reaching the canal, and then sent on as coastwise trade, shippers would benefit by adopting this course in preference to sending the goods direct to their destination through the canal on board the foreign ship."

This objection must be read in connection with the views expressed by the British Government while this Act was pending in Congress, which were stated in the note of the 8th July, 1912, on the subject from Mr. Innes, as follows:—

"As to the proposal that exemption shall be given to vessels engaged in the coastwise trade, a more difficult question arises. If the trade should be so regulated as to make it certain that only *bona fide* coastwise traffic which is reserved for United States vessels would be benefited by this exemption, it may be that no objection could be taken."

This statement may fairly be taken as an admission that this Government may exempt its vessels engaged in the coastwise trade from the payment of tolls, provided such exemption be restricted to *bona fide* coastwise traffic. As to this, it is sufficient to say that obviously the United States is not to be denied the power to remit tolls to its own coastwise trade because of a theory or possibility that the regulations yet to be framed may not restrict this exemption to *bona fide* coastwise traffic.

The answer to this objection, therefore, apart from any question of treaty interpretation, is that it rests on conjecture as to what may happen rather than upon proved facts, and does not present a question requiring submission to arbitration, as it has not as yet passed beyond the stage where it can be profitably dealt with by diplomatic discussion. It will be remembered that only questions which it may not be possible to settle by diplomacy are required by our Arbitration Treaty to be referred to arbitration.

On this same point Sir Edward Grey urges another objection to the exemption of coastwise vessels, as follows:—

"Again, although certain privileges are granted to vessels engaged in an exclusively coastwise trade, His Majesty's Government are given to understand that there is nothing in the laws of the United States which prevents any United States ship from combining foreign commerce with coastwise trade, and consequently from entering into direct competition with foreign vessels while remaining *prima facie* entitled to the privilege of free passage through the canal. Moreover, any restrictions which may be deemed to be now applicable might at any time be removed by legislation, or even, perhaps, by mere changes in the regulations."

This objection also raises a question which, apart from treaty interpretation, depends upon future conditions and facts not yet ascertained, and for the same reasons as are above stated its submission to arbitration at this time would be premature.

The second point of Sir Edward Grey's objection to the exemption of vessels engaged in coastwise trade remains to be considered. On this point he says that the provisions of the Act "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."

It will be observed that this statement evidently was framed without knowledge of the fact that the President's Proclamation fixing the tolls has issued. It is not claimed in the note that the tolls actually fixed are not "just and equitable," or even that all vessels which will be passed through the canal were not taken into account in fixing the amount of the tolls, but only that either or both contingencies are possible.

If the British contention is correct that the true construction of the treaty requires all traffic to be reckoned in fixing just and equitable tolls, it requires at least an allegation that the tolls as fixed are not just and equitable, and that all traffic has not been reckoned in fixing them, before the United States can be called upon to prove that this course was not followed, even assuming that the burden of suits would rest with the United States in any event, which is open to question. This Government welcomes the opportunity, however, of informing the British Government that the tolls fixed in the President's Proclamation are based upon the computation set forth in the report of Mr. Emory R. Johnson, a copy of which is forwarded herewith for delivery to Sir Edward Grey, and that the tolls which would be paid by American coastwise vessels, but for the exemption contained in the Act, were computed in determining the rate fixed by the President.

By reference to page 208 of Mr. Johnson's report it will be seen that the estimated net tonnage of shipping using the canal in 1915 is as follows:—

	Tons.
Coast-to-coast American shipping	1,000,000
American shipping carrying foreign commerce of the United States	720,000
Foreign shipping carrying commerce of the United States and foreign countries	8,780,000

It was on this estimate that tolls fixed in the President's Proclamation were based.

Sir Edward Grey says "this rule" (1 of Article 3 of the Hay-Pauncefote Treaty) "also provides that the tolls should be 'just and equitable.'" "The purpose of these words," he adds, "was to limit the tolls to the amount representing the fair value of the services rendered—i.e., to the interest on the capital expended and the cost of the operation and maintenance of the canal." If, as a matter of fact, the tolls now fixed (of which he seems unaware) do not exceed this requirement, and, as heretofore pointed out, there is no claim that they do, it is not apparent under Sir Edward Grey's contention how Great Britain could be receiving unjust and inequitable treatment if the United States favours its coastwise vessels by not collecting their share of the tolls necessary to meet the requirement. There is a very clear distinction between an omission to "take into account" the coastwise tolls in order to determine a just and equitable rate, which is as far as this objection goes, and the remission of such tolls, or their collection coupled with their repayment in the form of a subsidy.

The exemption of the coastwise trade from tolls, or the refunding of tolls collected from the coastwise trade, is merely a subsidy granted by the United States to that trade, and the loss resulting from not collecting, or from refunding, those tolls will fall solely upon the United States. In the same way the loss will fall on the United States if the tolls fixed by the President's Proclamation on all vessels represent less than the fair value of the service rendered, which must necessarily be the case for many years, and the United States will therefore be in the position of subsidizing or aiding not merely its own coastwise vessels but foreign vessels as well.

Apart from the particular objections above considered, it is not understood that Sir Edward Grey questions the right of the United States to subsidize either its coastwise or its foreign shipping, inasmuch as he says that His Majesty's Government do not find, "either in the letter or in the spirit of the Hay-Pauncefote Treaty, any surrender by either of the contracting Powers of the right to encourage its shipping or its commerce by such subsidies as it may deem expedient."

To summarize the whole matter: The British objections are, in the first place, about the Canal Act only, but the Canal Act does not fix the tolls. They ignore the President's Proclamation fixing the tolls, which puts at rest practically all of the supposititious injustice and inequality which Sir Edward Grey thinks might follow the administration of the Act, and concerning which he expresses so many and grave fears. Moreover, the gravamen of the complaint is not that the Canal Act will actually injure in its operation British shipping, or destroy rights claimed for such shipping under the Hay-Pauncefote Treaty, but that such injury or destruction may possibly be the effect thereof; and, further, and more particularly, Sir Edward Grey complains that the action of Congress in enacting the legislation under discussion foreshadows that Congress or the President may hereafter take some action which might be injurious to British shipping and destructive of its rights under the treaty. Concerning this possible future injury, it is only necessary to say that, in the absence of an allegation of actual or certainly impending injury, there appears nothing upon which to base a sound complaint concerning the infringement of rights claimed by Great Britain; [but] it may be remarked that it would, of course, be idle to contend that Congress has not the power, or that the President, properly authorized by Congress, may not have the power, to violate the terms of the Hay-Pauncefote Treaty in its aspect as a rule of municipal law. Obviously, however, the fact that Congress has the power to do something contrary to the welfare of British shipping, or that Congress has put, or may

put, into the hands of the President the power to do something which may be contrary to the interests possessed by British shipping, affords no just cause for complaint. It is the improper exercise of a power, and not its possession, which alone can give rise to an international cause of action; or, to put it in terms of municipal law, it is not the possession of the power to trespass upon another's property which gives a right to action in trespassing, but only the actual exercise of that power in committing the act of trespass itself.

When, and if, complaint is made by Great Britain that the effect of the Act and the Proclamation together will be to subject British vessels as a matter of fact to inequality of treatment, or to unjust and inequitable tolls, in conflict with the terms of the Hay-Pauncefote Treaty, the question will then be raised as to whether the United States is bound by that treaty both to take into account and to collect tolls from American vessels, and also whether, under the obligations of that treaty, British vessels are entitled to equality of treatment in all respects with the vessels of the United States. Until these objections rest upon something more substantial than mere possibility, it is not believed that they should be submitted to arbitration. Existence of an arbitration treaty does not create a right of action; it merely provides means of settlement to be resorted to only when other resources of diplomacy have failed. It is not now deemed necessary, therefore, to enter upon a discussion of the views entertained by Congress and by the President as to the meaning of the Hay-Pauncefote Treaty in relation to questions of fact which have not yet arisen, but may possibly arise in the future in connection with the administration of the Act under consideration.

It is recognized by this Government that the situation developed by the present discussion may require an examination by Great Britain into the facts above set forth as to the basis upon which the tolls fixed by the President's Proclamation have been computed, and also into the regulations and restrictions circumscribing the coastwise trade of the United States, as well as into other facts bearing upon the situation, with the view of determining whether or not, as a matter of fact, under present conditions, there is any ground for claiming that the Act and Proclamation actually subject British vessels to inequality of treatment or to unjust and inequitable tolls.

If it should be found as a result of such an examination on the part of Great Britain that a difference of opinion exists between the two Governments on any of the important questions of fact involved in this discussion, then a situation will have arisen which, in the opinion of this Government, could with advantage be dealt with by referring the controversy to a Commission of inquiry for examination and report, in the manner provided for in the unratified Arbitration Treaty of the 3rd August, 1911, between the United States and Great Britain.

The necessity of inquiring into questions of fact in their relation to controversies under diplomatic discussion was contemplated by both parties in negotiating that treaty, which provides for the institution, as occasion arises, of joint High Commission of inquiry, to which, upon the request of either party, might be referred for impartial and conscientious investigation any controversy between them, the Commission being authorized upon such reference "to examine into and report upon the particular questions or matters referred to it, for the purpose of facilitating the solution of disputes by elucidating the facts, and to define the issues presented by such questions, and also to include in its report such recommendations and conclusions as may be appropriate."

This proposal might be carried out, should occasion arise for adopting it, either under a special agreement, or under the unratified arbitration treaty above mentioned, if Great Britain is prepared to join in ratifying that treaty, which the United States is prepared to do.

You will take an early opportunity to read this despatch to Sir Edward Grey, and, if he should so desire, you will leave a copy of it with him.

I am, &c.,

P. C. KNOX.

Approximate Cost of Paper.—Preparation, not given; printing (1,300 copies), £13 10s.

Price 9d.]

By Authority: JOHN MACKAY, Government Printer, Wellington.—1913.

