(November 4th, 1912.)

Panama Canal and Treaty Obligations.

By Sir George W. Ross.*

ADDRESSING a regular meeting of the Canadian Club on Nov. 4th, 1912, Sir George W. Ross said:—

Mr. Chairman and Gentlemen,—As an epitome of the course I propose taking in discussing the Panama canal, let me say I shall first consider its advantages to the commerce of Europe, America, and the eastern coast of Asia, by shortening the distance between the various sea ports on the different coasts of these continents, but more especially the advantages to Canada by putting her at an easy distance between her Atlantic and her Pacific coast and the west coast of South America, with which there is a growing trade; second, I shall consider the various treaties between Great Britain and the United States and the other countries in which the terms on which the canal was to be used by all nations, are specifically set forth; third, the attitude of the United States Senate both with regard to the tolls charged to the foreign and coastwise trade of merchant vessels using the canal; fourth, the disadvantage to Canada in the final decision of the Senate by which the coastwise traffic of the United States is permitted to use the canal free of tolls, while the coastwise trade of Canada is subject to the same tolls as the shipping of foreign nations, and, lastly, the attitude which we should assume in endeavoring to secure justice for our shipping under the solemn treaty agreed to both by the United States and Great Britain.

For many years before Columbus set sail towards the west in the hope of discovering a short route to India, it was the opinion of European geographers that such a route existed, and although Columbus failed in his quest, France and Great Britain were incited by his example to send expeditions from time to time for the same purpose. To Spain, however, belongs the honor of extending her explorations as far west

* Sir George William Ross, Kt., LL.D., of Scottish extraction, was born 72 years ago in Middlesex County, Ontario, was for some years a school teacher and inspector, was called to the bar in 1887, entered the Dominion Parliament in 1872. became Minister of Education in 1883, and was Premier and Provincial Treasurer from 1899 to 1905. He was called to the Senate in 1907, was lately elected Liberal leader in the Upper Chamber, and is one of the two or three most effective public speakers in the Dominion.

as the Isthmus of [illegible] and Balboa, a Spanish explorer, was the first Europea[illegible]oss the isthmus and look upon the still waters of the [illegible] ocean. This was in 1513. In 1521 the Spanish gove[illegible] made a survey of the isthmus to ascertain if a cana[illegible]ecting the two oceans was feasible. Here this great proj[illegible]ested without further action for three centuries. In 1804 Humboldt, the great traveller, explored four different routes for a canal and made known to the world his opinion regarding its commercial advantages.

As time went on the growing commerce of the United States between its Atlantic and Pacific coast, as well as the enormous development of commerce between Europe and Japan, China, Mexico and the republics of the west coast of South America, accentuated the desirability of the short route by way of Panama instead of the long and perilous route by way of Magellan straits. The advantage to navigation in thus shortening the distance between some of the larger sea ports of the world from the east to the west is very striking. For instance, taking Liverpool as representing the most important port in Europe, the distance from Liverpool to Vancouver would be shortened by 5,666 miles, and from other European ports, such as Antwerp and Havre, more or less to a similar extent.

Turning to this side of the Atlantic I find, on the authority of Mr. Johnson, Commissioner of the United States on the Panama canal, that the distance between New York and San Francisco would be shortened by 7,873 miles, to the west coast of South America 5,139 miles, and to Yokohama 3,768 miles, with a proportionate advantage to New Orleans and the other American ports on the south. From New York to Sydney, Australia, there would be a saving of 3,669 miles, to Melbourne 2,770 and to Wellington, New Zealand, 2,493 miles. Similar advantages in distance would accrue to the commerce of the republics on the east and west coast of South America.

If we simply consider the construction of the Panama canal as it is likely to affect Canadian commerce, the following advantages would accrue:

1. Vancouver is brought 7,271 miles nearer to Montreal than it is by the Straits of Magellan. Car loads of merchandise across the continent cost $30 per ton and upwards. By way of the Panama canal the cost is estimated at from $6 to $9 per ton, with delivery in 30 days instead of 90 days around the Horn. The trade between British Columbia and the maritime provinces last year amounted to 118,417 tons, including vessels entered and cleared. With a shorter route by way of

the Panama canal and the substantial reduction in freights as compared with the transcontinental railways, this trade would no doubt increase rapidly.

2. The distance between Vancouver and Liverpool would be reduced by 5,666 miles. The effect of this would no doubt be largely to increase the imports and exports of British Columbia to and from Europe. In fish alone the output of British Columbia in 1910 amounted to $9,000,000, a large portion of which already goes to European markets. British Columbia has also a large output of timber, the value of which will be greatly enhanced by cheaper transportation.

3. The Panama canal would afford to Canadian shipping easier access to the republics of South America on the Pacific coast and to Mexico and California, with all of which a large trade could be developed in the exchange of Canadian manufactures for the tropical and subtropical products of these countries.

4. As the West India Islands, most probably Jamaica, would become a coaling station for vessels en route to the west, an additional market would be supplied for the coal mines of Nova Scotia, for which return cargoes to Canada would be readily obtained in the abundant produce of these islands.

A very important advantage to Canada not to be omitted would be the advantage of the Panama route in relieving the railway transportation of the enormous wheat products of the western provinces. So rapid has been the production of wheat, and so brief the period for transportation to the Canadian ports on Lake Superior, that it is doubtful whether even with three transcontinental railways this congestion can be fully relieved at all times. Should the western wheat fields produce, as it is expected, four or five hundred million bushels, within the next five or ten years, the loss to the farmers by delay in being relieved of their grain, would be even greater than it is at present. An outlet, therefore, by way of Vancouver to Liverpool via the Panama canal is of the greatest importance, and I believe not impracticable. For instance, Calgary is 616 miles nearer Vancouver than it is to Fort William, the nearest shipping point on the east. Fort William is closed to navigation within two or three months of the harvesting of the western wheat, while Vancouver is open all the year round. If the route from Edmonton to Vancouver is adopted, the saving in distance would be 716 miles as against Fort William. At the close of navigation of the upper lakes the nearest sea port to the west is St. John, a distance of

2,393 miles from Moose Jaw, about the centre of the western wheat fields. If shipped west by way of Vancouver, the distance would be only 1,085 miles. Even if the freight rates by way of Liverpool were not less than the route by which western grain now reaches European markets, and it is confidently expected they would be, the relief from congestion, which is likely to prevail, would, in itself, greatly benefit the farmers of Alberta and Saskatchewan.

In an interview at Ottawa, Sir Richard McBride, Premier of British Columbia, said:

> The persistently reiterated statements that the movement of Canadian export wheat via Vancouver and the Panama canal will not be practicable are unworthy of notice. I can say officially that it is within my knowledge that elevator men of the largest responsibility are planning for the construction of vast grain elevators on the Pacific coast to take care of the expected grain export trade which the completion of the Panama canal will bring over our way.

In view of these advantages to commerce, it becomes the settled policy of the two nations more immediately concerned in the construction of the Panama canal, viz., the United States and Great Britain, that the territory through which the canal passed should be neutralized and that, no matter what country possessed the sovereignty of the soil, so far as the canal was concerned, "all nations" should be permitted to use it on terms of "equality." The first nation to make a declaration, so far as I can ascertain, to that effect, was the United States. In 1826 a Congress of the Independent States of Central America was held at Panama for the purpose of considering the construction of the canal between the two oceans. At this congress the United States was represented by invitation, but owing to the unsettled condition of Central American politics, nothing definite was accomplished. As indicating the attitude of the United States towards this project, it is interesting to quote from the instructions given by Henry Clay to the United States delegates:

> "If the work should ever be concluded," he said, "the benefits should not be exclusively appropriated to one nation, but should be extended to all ports of the globe upon payment of just compensation and reasonable tolls."

The convention at Panama having failed, the United States Senate took up the question, and on March 2, 1835, adopted unanimously the following resolution:

> Resolved, that the President of the United States be respectfully asked to consider the expediency of opening negotiations with the Governments of other nations, and particularly with the Government of Central America and New Granada, for the purpose of effectually protecting, by suitable treaty stipulations with them, such individuals or companies as may undertake to open a communication between the Atlantic and Pacific oceans by the construction of a ship canal across the Isthmus which connects North and South America, and of securing forever, by such stipulations, the free and equal right of navigating such canal to all such nations, on the payment of such reasonable tolls as may be established to compensate the capitalists who may engage in such undertaking and complete the work.

Four years later, in 1839, the House of Representatives, by unanimous vote, adopted a resolution requesting the President:

> To consider the expediency of opening or continuing negotiations with the Governments of other nations, and particularly with those the territorial jurisdiction of which comprehends the Isthmus of Panama, and to which the United States have accredited ministers or agents, for the purpose of ascertaining the practicability of effecting a communication between the Atlantic and Pacific oceans by the construction of a ship canal across the Isthmus and of securing forever, by suitable treaty stipulations, the free and equal right of navigating such canal by all nations.

In the treaty between the United States and New Granada, ratified on the 12th day of December, 1846, Article 35, it was agreed that New Granada and the United States should have similar privileges as to the transit of passengers and merchandise over any canal that might be completed under the treaty. In commenting on this treaty President Polk said:

> The ultimate object, as presented by the Senate of the United States in their resolution to which I have already referred, is to secure to all nations the free and equal rights of passage over the Isthmus.

Mr. Clayton, Ambassador to London, in a letter to the Secretary of State, September 25, 1849, stated:

> That the United States sought no exclusive privilege or preferential right of any kind in regard to the proposed communication, and their sincere wish, if it should be found practicable, was to see it dedicated to the common use of all nations on the most liberal terms and a footing of perfect equality for all.

Again he says:

> That the United States would not, if they could, obtain any exclusive right of privilege in the highway which naturally belongs to all mankind, that while they aimed at no exclusive privilege for themselves, they could never consent to see so important a communication fall under the exclusive control of any other commercial power.

In 1850 the famous Clayton-Bulwer treaty, for the construction of a canal, was made between Great Britain and the United States. It provided that neither the United States nor Great Britain should exclusively control the canal or build any fortifications along it; that they should guard the safety and neutrality of the canal and invite all other nations to do the same, that they should give aid and support to any satisfactory company which would construct the canal.

> (Art. 1) That neither Great Britain nor the United States would grant the citizens or subjects of the one, any rights or advantages as regards commerce or navigation to the said canal, which shall not be offered on the same terms to the citizens or subjects of the other.

Mr. Secretary Fish, during the administration of President Grant, wrote:

> We shall.....be glad of any movement which shall result in the early decision of the question of the most practicable route and the early commencement and speedy conclusion of an interoceanic communication which shall be guaranteed in its perpetual neutralization and dedication to the commerce of all nations, without advantage to one over another of those who guarantee its assured neutrality.

Secretary of State Blaine, in his instructions to Mr. Lowell, said:

> Nor does the United States seek any exclusive or narrow commercial advantage. It frankly agrees and will by public proclamation declare at the proper time in conjunction with the Republic on whose soil the canal may be located that the same rights and privileges, the same tolls and obligations for the use of the canal shall apply with absolute impartiality to the merchant marine of every nation on the globe; and equally in time of peace the harmless use of the canal shall be freely granted to the war vessels of other nations.

President Cleveland, in his message of 1885, his first message to Congress, said:

> These suggestions may serve to emphasize what I have already said on the score of the necessity of the neutralization of any interoceanic transit; and this can only be accomplished by making the uses of the route open to all nations and subject to the ambitions and warlike necessities of none.

From Secretary of State Olney's memorandum, 1896:

> That the interoceanic routes there specified should, under the sovereignty of the States traversed by them, be neutral and free to all nations alike.

On December 13, 1888, the De Lesseps Company, that undertook to construct the canal, suspended payment and went into bankruptcy. He estimated the cost of the canal at $114,000,000, and promised to finish it for $120,000,000. At the end of 1888 not more than one-fifth of the work was done, while nearly $400,000,000 had been paid out of the treasury. It was said that one-third of this money had been spent on the canal, one-third wasted, and one-third stolen.

In 1890 a new company was organized to complete the canal under M. Grenade, the time for completion being extended to October 1, 1904. He estimated that the canal would be completed for $100,000,000.

In the meantime steps were taken for the abrogation of the Clayton-Bulwer treaty by which the United States bound itself not to build a canal across Panama and the result of which was the first Hay-Pauncefote treaty of 1900. This treaty was amended by the United States Senate, but in its amended form it was rejected by the British government.

The second treaty known as the Hay-Pauncefote treaty 1901, was ratified by the United States Senate. It superseded the Clayton-Bulwer treaty (1850) and gave the United States the privilege to construct, operate, and control the canal without any co-operation or guarantee from Great Britain or any other country.

President Roosevelt, in submitting the Hay-Pauncefote treaty to Congress, said:

> It specifically provides that the United States alone should do the work of building and assume the responsibility of safeguarding the canal and shall regulate its neutral use by all nations on terms of equality without the guarantee or interference of any outside nation from any quarter.

Again he says, on January 4, 1904, in the special message:

> Under the Hay-Pauncefote treaty, it was explicitly provided that the United States should control, police and protect the canal which was to be built, keeping it open for the vessels of all nations on equal terms. The United States thus assumes the position of guarantor of the canal and of its peaceful use by all the world.

In a note by Secretary Hay, on January 5, 1904, he states:

> The Clayton-Bulwer Treaty was conceived to form an obstacle, and the British Government therefore agreed to abrogate it, the United States only promising in return to protect the canal and keep it open on equal terms to all nations, in accordance with our traditional policy.

Senator Davis, in his report to the President of the United States on the Hay-Pauncefote treaty, said:

> No American statesman speaking with official authority or responsibility has ever intimated that the United States would attempt to control this canal for the exclusive benefit of our Government or people. They have all with one accord declared that the canal was to be neutral ground in time of war, and always open on terms of impartial equality.
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> To set up a selfish motive of gain by establishing a monopoly of a highway that must derive its income from the patronage of all maritime countries, would be unworthy of the United States if we owned the country through which the canal was to be built.

I have dwelt upon the treaties between Great Britain and the United States at some length because they seem to occupy the forefront of the situation so far as any decisive action was concerned. It must not be forgotten, however, that other nations of Europe appeared to be equally anxious for the early construction of the canal and treaties for this purpose were made with Spain in 1850, with Belgium in 1858, with France in 1859, and with Italy in 1871. In addition to these treaties, concessions were made to private corporations, and Congress at different times voted large sums of money for the survey of several routes, for the purpose of ascertaining their relative feasibility and cost. The route most favored by the last Board of Commissioners appointed by the United States government for this purpose was by way of Lake Nicaragua, which, although a longer route than by way of Panama, promised to be less expensive. Not content, however, with the result of the examination by way of Nicaragua, a treaty was entered

into with New Granada, now known as Columbia, for a concession across Panama. This treaty was submitted to the Senate of New Granada, but failed in ratification. In the meantime the new French Panama Company was pursuing its labors under financial difficulties. It was bound by its concession from Columbia to complete the canal in 1904, a contract which seemed impossible of fulfilment, and when a further extension of time was asked, Columbia seemed disinclined to grant such a privilege, and that brings me back to the failure of Columbia to ratify the treaty made with the United States. The province of Panama, which formed part of Columbia, was most anxious for the completion of the canal, and on the failure of Columbia to ratify the treaty, arose in rebellion against the parent state. The rebellion broke out on November 3, 1903, and on the 10th of November, Panama was recognized as a separate republic by the United States.

On November 18 a treaty was formed between the United States and the new republic for the concession of a strip of land ten miles wide extending across the isthmus a distance of 41 miles, to be known as the canal zone. For this concession the United States paid $10,000,000 in cash, and agreed to pay an annual rental of $250,000, beginning nine years after the date of the treaty, and to be paid from year to year so long as the treaty remained in force. The French Panama Company, burdened by its financial difficulties, became discouraged, and agreed with the United States to sell its concession and all its plant, works and buildings for the sum of $40,000,000. By these two transactions, viz., its treaty with Panama and its purchase of the French company's interests, the United States was in a position to take up this great project and to throw into it the characteristic force of the American nation in dealing with public undertakings. Accordingly, under the direct control of the government of the United States, work was begun in 1904, and from recent reports the canal is to be completed in 1915, at a maximum cost of $400,000,000. In its treaty with Panama the United States agreed that the conditions of the Hay-Pauncefote treaty should apply to the canal. By Article 18, of the Panama treaty, it was agreed:

> The canal when constructed, and the entrances thereto, shall be neutral in perpetuity, and shall be opened upon the terms provided for by Section 1 of Article III of and in conformity with all the stipulations of this treaty (the Hay-Pauncefote Treaty entered into by the Government, of the United States and Great Britain on November 18, 1901.)

Having now brought down the record of the treaties entered into for the construction of the canal, we are brought face to face with the action of Congress at its last session and to the consideration of that action so far as it affects Canada. By message from the President of the United States, Congress was asked to legislate for the maintenance and government of the canal, and also as to the proper charges to be made for its use. The discussion of this message took place principally in the Senate and naturally divided itself into two parts. (1) The tolls to be charged on the foreign shipping of all nations using the canal, and (2) the tolls to be charged on the coastwise vessels, i.e., of vessels trading from port to port of the coast of any nation using the canal. In regard to coastwise traffic, the United States, the republics on opposite coasts of South America and Canada were the only nations interested.

In order that we might understand clearly the condition imposed upon the United States government if it undertook the construction of the canal, let me quote from the Hay-Pauncefote treaty of 1901. By Article 3 of the treaty it was agreed between Great Britain and the United States that:

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

Unless we adopt the aphorism of Talleyrand, that the use of language is to conceal our thoughts, Article 3, which I have just read, can only have one meaning, i.e., that "all nations" have the right to use the canal on terms of "entire equality." Notwithstanding the unmistakable fairness of the conditions prescribed in this article, the President of the United States, in his message to Congress, said:

> . . . I am confident that the United States has the power to relieve from the payment of tolls any part of our shipping that Congress deems wise. We own the canal, it was our money that built it. We have the right to charge tolls for its use. These tolls must be the same to everyone, but when we are dealing with our own ships, the practice of many Governments of subsidizing their own marine vessels is so well established in general, that a subsidy equal to the tolls as equivalent remission of tolls cannot be held to

be a discrimination in the use of the canal. The practice in the Suez Canal makes this clear.

Speaking in the Senate to the Bill introduced on the advice of the President, Senator Lodge, of Massachusetts, said:

> When I reported the Hay-Pauncefote Treaty my own impression was that it left the United States in complete control of the tolls upon its own vessels. I did not suppose then that there was any limitation upon our right to charge such tolls as we pleased upon our own vessels or that we were included in the term "all nations." The payment of tolls is a domestic question for us and for nobody else to settle. If we saw fit by paying the tolls to give American vessels the benefit of the canal which we have built and paid for, we have a clear right to do it, and we violate no treaty injunction by doing it . . . nobody can go beyond that and ask where the money came from . . . the power to fix the tolls does not give us the power to go behind and inquire who is paying the tolls.
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> The British Government paid to the P. and O. Steamship line for carrying mails, £297,142,000, as against the sum of £357,000,000 paid in tolls.

In confirmation of his contention that the American government had the right to subsidize its shipping, either foreign or coastwise, to the extent of the tolls charged for the use of the canal, Senator Lodge gave several illustrations of the practice prevailing in the case of the Suez canal. For instance:

> The North German Lloyd Steamers received an annual subsidy of $1,395,160 for carrying mails to Asia and Australia. These were admittedly indirect subsidies. There were other subsidies, however, that were specially made in lieu of tolls. Russia in 1909 paid $934,750; Japan, $1,336,947; France, $2,145,232; Austria, Krs. 4,700,000 and Spain, $285,000.

Notwithstanding these precedents, Senator McComber, of North Dakota, uttered a warning note as follows:

> We may provide for carrying coastwise or foreign mails over such routes as our judgment may direct, and we may give a subsidy for carrying our mails, but we may not, by any kind of under-hand means, or indirectly, violate an agreement to charge our coastwise, or any other, vessel the same tolls as we charge the vessels of Canada engaged in the coastwise trade, or the vessels of any other country engaged in any trade.

> If we off-set tolls by a subsidy, it must be based upon such conditions as would justify the subsidy, irrespective of tolls, otherwise it might not be a good faith transaction. Every diplomatic utterance for over half a century stands for a warrant of our good faith. Every message of our President who has discussed the subject of our Isthmian canal during that period is a national declaration of our policy to maintain as a great world canal, such connecting highway between the oceans dedicated to peace, and within whose zone the clamor of war should never be heard.

Mr. Cummings, of Iowa, disregarding the argument of a subsidy, took the ground that American shipping should be free of tolls because of the sovereignty of the United States over the canal zone. He said:

> My proposition is that the Government of the United States undertook the enterprise, and the rules that would have been applicable if it had been carried forward by private enterprise, are not applicable or appropriate because there are certain qualities in sovereignty that ought not to be surrendered and only the clearest terms would warrant the construction that surrenders it.

But I must not trouble the House with further quotations from the many able speeches on the subject. The conclusion arrived at finally was that embodied in the Bill, afterwards signed by the President, that the foreign shipping of the United States should pay $1.25 on the registered tonnage of American shipping using the canal and $1.50 on every passenger. The reasons which led to this conclusion would appear to be:

1. That, strictly construed, the term, "all nations" in the treaty, did include the United States.

2. That good faith must be kept with the precise terms of the Hay-Pauncefote treaty, or to use the words of Senator Lodge:

> I do not wish anything done by this Government that could ever be exposed to the suggestion, even, of not acting in good faith under the treaty. I think we should be most punctilious even if there is nothing more than a doubt about the word in carrying out the Treaty strictly to its letter.

3. That the foreign shipping of the United States was comparatively small (it having been stated that it did not exceed ten vessels in all) and that to construe the treaty as excluding

American shipping, was raising an issue of comparatively little importance.

4. That to construe the treaty in a manner that might be objectionable to Great Britain, who was a party to it, might involve an appeal to the Hague tribunal, and that such an appeal, if made, would, in all probability, be adverse to the United States. On this point Senator Lodge said:

> If we should undertake simply to make our ships free, we should then raise a question which would under our treaties of arbitration, necessarily go to the Hague, and if it goes to the Hague I think we may take it as decided now. It is not likely that the United States would ever get a favorable decision from that tribunal on a question when the interests of Europe are on one side and of the United States on the other.

With this final decision that the vessels engaged in foreign trade should be placed on a basis of entire equality as to tolls, Canada has no objection to offer. If our vessels trade with the republics on the west coast of South America, or with Mexico or California, they ought to pay the same tolls as vessels from Europe or elsewhere similarly engaged. We are quite willing that the United States should receive ample compensation for the vast investment it is making in the construction of the Panama canal. We recognize it as an enterprise beyond the resources of any private corporation and that the United States has placed the whole world under an obligation for undertaking a work of such tremendous importance to the commerce of two continents in which we are included, and we now look to its early completion and the development of our trade with our own province of British Columbia on the west and with South America and Mexico as a consequence.

The Senate having decided that vessels engaged in the foreign trade of the United States should pay the same tolls as other nations, gave its attention to the charges which should be made, (if any) on coastwise traffic, and, strange to say, came to the conclusion as contained in section 5 of the Bill to which I have referred—"that no tolls shall be levied on vessels engaged in the coastwise trade of the United States," thus placing Canadian vessels engaged in the coasting trade of Canada on the same basis as vessels engaged in the foreign trade. That such a decision is inconsistent with the conclusion reached with regard to vessels engaged in foreign trade is quite manifest from the speeches made by leading senators during the debate. To quote again from Senator Lodge:

> I cannot draw any distinction between American vessels engaged in the coastwise trade and those in foreign commerce. They all alike, it seems to me, come under the first clause in article 3. A doubtful question is whether in making that treaty when the United States said "all nations" the United States intended to include itself. That is the whole question. Some of us believe that it did not, and some that it did.... For the purposes of this treaty it does not make any difference what trade they are engaged in....In my opinion....there is no distinction to be drawn between American vessels engaged in coastwise traffic and American vessels engaged in the foreign trade. There is no such distinction in the treaty. It says the vessels of "all nations."

In the face of this declaration of Senator Lodge, that foreign and coastwise traffic were on precisely the same basis so far as the treaty was concerned, to charge foreign vessels with a toll, and to relieve coastwise traffic of any charge whatsoever, appears as a glaring inconsistency for which no explanation has yet been offered.

Following up the speeches of senators still further, not only does it appear an inconsistency, but a discrimination against Canada which calls for the most emphatic protest.

To quote Senator Lodge again:

> This whole excitement has arisen out of the fact that there is one country and only one country in the world which is situated with regard to the canal just as we are....and that is Canada. England is not worrying over her own merchant marine....The trouble is the Canadian voyage. If our ships have an advantage, the Canadian business would probably come in American vessels to American ports and then by American railways back to Canada. The discrimination in competition with Canada seems very clear to me and very direct. I think they feel it very much in Canada. It is well worth while to remember that there is a Canadian Atlantic coast and a Canadian Pacific coast; the commerce between the Atlantic and the Pacific is largely a competing one. Under this provision ships from the United States would be free from tolls and those from Canada would be subject to the payment of tolls. Thereby the American coasting trade is at once given, by being free of tolls, an advantage as against the Canadian trade. That is at the bottom of all this trouble.

Speaking to the same effect, Senator McComber, of North Dakota, said:

> We are, by disregarding this treaty and allowing our coastwise vessels to go free through the canal, giving a preferential right to our coastwise trade, not only as against the coastwise trade of any other country, but also as against the foreign competing vessels entering our ports.

The arguments advanced in favor of free use of the canal for United States shipping engaged in the coasting trade may be summed up as follows:

1. That as the coastwise traffic was a purely domestic traffic in which foreign vessels could not engage, the Hay-Pauncefote Treaty could not apply to it.

2. That as there could be no competition with American vessels in the coastwise traffic by virtue of this prohibition, there could be no discrimination in their favor. A preference for American shipping could only apply where it was placed in competition with foreign shipping.

3. That the Panama canal being owned by the United States was merely an extension of the coast line of the United States and therefore came under coastwise traffic.

4. That to impose a toll upon domestic commerce would be a tax upon United States shipping and detrimental to a very important branch of domestic commerce.

5. That as it was desirable to establish competition between transcontinental railways carrying freight from east to west and vice versa it was necessary that the shipping engaged in a similar trade should be relieved from all charges that would be likely to increase the cost of freight and shipping between the two coasts.

Let me briefly consider these arguments in detail. Was it intended by the Hay-Pauncefote Treaty that the coastwise traffic of the United States should be treated the same as traffic of "all nations?" Senator Lodge claimed that there was no distinction between coastwise and foreign traffic. Then, if there was no distinction, there should be no discrimination, for the Hay-Pauncefote Treaty clearly states that vessels of "all nations" should be considered on terms of "entire equality." And here it is important to notice that, when the first Hay-Pauncefote Treaty was before the Senate in 1900, it was moved by Senator Bard, of California, that

> The United States reserves the right, in the management and regulation of the canal, to discriminate in respect to charges of traffic of vessels of its own citizens engaged in the coastwise trade.

This amendment was rejected on the ground that it was unnecessary, inasmuch as foreign vessels could not engage in coasting trade according to the coasting laws of the United States. But, is that what the amendment means? It says "the United States reserves the right to discriminate in respect to vessels of its own citizens engaged in the coastwise trade." By the rejection of the amendment, that right was not reserved and, if not reserved, it must have remained subject to the Hay-Pauncefote Treaty, and, if so, it is beyond the power of Congress to remove it from the treaty, as, by the constitution of the United States, the terms of the treaty are not subject to amendment by legislation.

But this amendment has another aspect. It was admitted to the floor of the Senate that, if it had been adopted and incorporated into the second treaty, the British Government would have rejected the treaty on that account. Are we justified, therefore, in assuming that its exclusion was intentional in order that Congress, when it came to legislate in the matter of tolls, would not, unless by the direct terms of the treaty, be restrained from taking the course finally decided upon? If it was the intention of the United States Senate to exclude coastwise traffic from the treaty, the time to say so was when the treaty was being negotiated and not ten years later.

Again, if the Senate was justified, under the treaty, in relieving the coastwise traffic of the United States from tolls, would it not necessarily follow that a similar privilege should be extended to the coastwise traffic of Canada? Both countries are in precisely the same position, as was admitted in the Senate, in regard to traffic between their eastern and western coasts. The treaty says that the vessels of "all nations" were to be permitted the use of the canal on terms of "entire equality and without discrimination." If the treaty allows the coastwise traffic of the United States to be free, it certainly should allow a similar privilege to Canadian coastwise traffic, and that right should be insisted upon by the Government of Canada in the strongest terms.

Nor does the fact that American coastwise traffic is absolutely free from competition strengthen the argument in favor of relieving American coasting vessels from tolls in the canal. Canadian coasting traffic is precisely in a similar position and it should be treated with equal consideration.

The claim that, as the United States owned the canal, and, by virtue of that ownership or sovereignty, as urged by Mr. Cummins, of Iowa, the canal became part of the coastline of

the United States, does not, in my opinion, place the canal in the same relation to the coasting trade as its ordinary natural boundaries. In the first place, the canal is purely an artificial boundary. The sovereignty over it is not absolute as is the sovereignty of the United States over its Atlantic and Pacific coast line. At best, it is but a conditional sovereignty subject to a treaty with Great Britain. The natural boundaries of the United States are subject to no treaty and, therefore, its control in that respect is absolute. With respect to the canal the United States Government bound itself in solemn treaty that "the canal should be free and open to the vessels of commerce and war of all nations. . . . .on terms of entire equality." This, if it means anything at all, means a division of sovereignty between Great Britain and the United States. The United States is, by the treaty, the trustees for all nations observing the rules under which the canal is governed. While the United States Government has power to regulate tolls and provide for the maintenance and protection of the canal, it does so, not for itself alone, that is to say, by the law of sovereignty, but as a trustee for the commerce of the world. Supposing the canal had been constructed by the Republic of New Granada, or Nicaragua, under treaty with the United States or Great Britain on the terms indicated in the earlier part of my speech, would the United States acknowledge any ground of sovereignty to discriminate between the coasting and foreign trade of the United States? I mistake very much the temper of Congress if any such ground would be admitted. The United States, therefore, being the trustee of the Panama Canal under conditional sovereignty only, have we not a right to insist that this trusteeship shall be exercised according to the conditions under which it was assumed, namely, "that there shall be no discrimination against any nation or its citizens or subjects in respect to the conditions or charges of traffic or otherwise."

It was also objected in the Senate that a toll upon the domestic commerce of the United States would be detrimental to the development of United States shipping, and more particularly to the shipbuilding industry of the New England States. Admitting this to be true, would not a similar argument apply to Canadian shipping? When Great Britain entered into the Hay-Pauncefote Treaty, we may reasonably assume that she did so in the expectation that it would not, in any manner, prove detrimental to her subjects in her dominions beyond the seas. Shipbuilding is a very important industry on the Atlantic coast, and will, no doubt, grow in

importance on the Pacific coast as well. Having protected their own shipping by rigid coasting laws, it is now proposed to encourage that shipping by free tolls regardless of the fact that, by discriminating against the Canadian coasting trade, they are acting adversely to the shipping interests of Canada. That, in my opinion, is also a discrimination against Canadian interests.

A great deal of importance was attached to the remission of the tolls of the coast trade of the United States from the fact that it would strengthen the competition between transportation over land by rail and transportation via the canal by water. It was alleged that, although there are several transcontinental railways in the United States, there was really no competition between them, as their schedules for freight were practically the same. Though not avowedly a combination for mutual protection, the shipper of merchandise across the continent was at their mercy, and the only relief possible, under the circumstances, was competition by water. This was a condition which Congress has endeavored to relieve by a remission of the tolls on coastwise traffic through the canal. The position of Canada in regard to its transcontinental railways is practically identical with the conditions of the United States. Although our Railway Commission has power to regulate freight charges and, apparently, to protect the shipper of merchandise from exorbitant rates for freight, the relief is neither so direct nor so certain as it would be if competition were provided by the water route from east to west and vice versa, and here, as in the other cases already stated, the discrimination against Canada is apparent. American shippers have the benefit of a coastwise trade free from tolls. The Canadian shipper has no such privilege.

Looking into these various forms of discrimination to which I have referred, more closely, certain consequences are observable. First, a toll upon Canadian shipping will necessarily affect shipping as already stated, will affect the price and supply of lumber used in shipbuilding, will affect the merchants who furnish supplies for vessels engaged in the coasting trade, will affect the employment of sailors and other laborers necessary for every voyage, and these are all important considerations. Besides, there is a growing trade now which is really a coasting trade between the eastern and the western ports of Canada. Mr. E. R. Johnson, to whom I have already referred, states that the direct trade between Canadian ports and British Columbia in 1910 amounted to 118,407 tons, and between the Atlantic and Gulf ports of the United States and British Columbia, to 699,075 tons.

Shortening of the distance between Montreal, Halifax and Vancouver will, no doubt, greatly increase that trade. Why should we submit to its being hampered by a discrimination which I am quite certain was never intended when the Hay-Pauncefote Treaty was negotiated. Senator Lodge was good enough to say that Canadians could avoid the tolls on the coastwise traffic by shipping by American railways to an American port, and thence, by a coasting vessel to an American port on the opposite coast, and thence, by American railways to its destination in Canada. While Senator Lodge is entitled to our thanks for thus relieving us from an apparent difficulty, he has evidently forgotten that the relief proposed is substantially a contribution to American railways and American shipping at the expense of Canada.

Having stated the objection which I think can be fairly urged against the action of the United States Congress, let me briefly refer to the Treaty of Washington of 1871, under which the United States Government alleged that American shipping was unfairly treated by the Government of Canada. This treaty contained the following article:

> Art. XXVII.—The Government of Her Britannic Majesty engages to urge upon the Government of the Dominion of Canada to secure to the citizens of the United States the use of the Welland, St. Lawrence, and other canals in the Dominion on terms of equality with the inhabitants of the Dominion, and the Government of the United States engages that the subjects of Her Britannic Majesty shall enjoy the use of the St. Clair Flats canal on terms of equality with the inhabitants of the United States, and further engages to urge upon the state Government to secure to the subjects of Her Britannic Majesty the use of the several state canals connected with the navigation of the lakes or rivers traversed by, or contiguous to the boundary line between the possessions of the high contracting parties on terms of equality with the inhabitants of the United States.

Acting, as it believed, within its rights under the Washington Treaty, and for the purpose of meeting the expense of working the Welland Canal System of Canada, the Canadian Government imposed a toll of 20 cents per ton on all freight passing through the Welland canal, whether carried in American vessels or Canadian vessels. In the case of freight east bound it was provided that a rebate of 18 cents per ton should be allowed if the boat went as far as Montreal, and

that if on the course, say from Duluth, Chicago or any other American city, cargoes should be unloaded and load again on Canadian territory, the rebate would be allowed. The American Government objected to this rebate as a discrimination against American vessels carrying freight to the ports of the United States on the Atlantic seaboard or on Lake Ontario.

On this subject President Cleveland in a message to Congress on August 23rd, 1888, said:

> I desire to call the attention of Congress to a subject involving such wrongs and unfair treatment to our citizens as in my opinion require prompt action. The navigation of the Great Lakes and the immense business and carrying trade growing out of the same have been treated broadly and liberally by the United States Government and made free to all mankind, while Canadian railroads and navigation companies share in our country's transportation upon terms as favorable as are accorded to our own citizens. The canals and other public works built and maintained by the Government along the line of the lakes are made free to all.
>
> By article XXVII of the Treaty of 1871, the provision was made to secure to the citizens of the United States the use of the Welland, St. Lawrence, and other canals in the Dominion of Canada on terms of equality with the inhabitants of the Dominion, and to also secure to the subjects of Great Britain the use of the St. Clair Flats canal on terms of equality with the inhabitants of the United States.
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> The equality of the inhabitants of the Dominion which we were promised in the use of the canals of Canada did not secure to us freedom from tolls in their navigation. But we had a right to expect that we, being Americans and interested in American commerce, would be no more burdened in regard to the same than Canadians engaged in their own trade, and the whole spirit of the concession made was, or should have been, that merchandise and property transported to an American market through these canals should not be enhanced in its costs by tolls many times higher than such as were carried to an adjoining Canadian market. All our citizens, producers and consumers, as well as vessel owners, were to enjoy the equality promised.
>
> To promise equality and then to practice it conditional upon our vessels doing Canadian business

instead of their own is to fulfil a promise with the shadow of performance. I recommend that such legislative action be taken as will give Canadian vessels navigating our canals, and their cargoes, precisely the advantages granted to our vessels and cargoes upon Canadian canals, and that the same be measured by exactly the same rule of discrimination.

The course which I have outlined and the recommendations made relate to the honor and dignity of our country and the protection and preservation of the rights and interests of all people.

A government does but half its duty when it protects its citizens at home and permits them to be imposed upon and humiliated by the unfair and overreaching disposition of other nations.

If we invite our people to rely upon arrangements made for their benefit abroad, we should see to it that they are not deceived; and if we are generous and liberal to a neighboring country our people should reap the advantage of it by a return of liberality and generosity.

President Harrison several times commented on this subject. In a message under date of February 23, 1892, he says:

In the matter of canal tolls our treaty was flagrantly disregarded.

In speaking of the discriminations practised, he says in a message of June 20, 1892:

The report of Mr. Partridge, the solicitor of the Department of State, which accompanies the letters of the Secretary of State, states these discriminations very clearly. That these orders as to canal tolls and rebates are in direct violation of Article XXVII of the treaty of 1871 seems to be clear. It is wholly evasive to say that there is no discrimination between Canadian and American vessels; that the rebate is allowed to both without favor upon grain carried through to Montreal or transshipped at a Canadian port to Montreal. The treaty runs:—

To secure to the citizens of the United States the use of the Welland, St. Lawrence, and other canals in the Dominion on terms of equality with the inhabitants of the Dominion. It was intended to give to consumers in the United States, to our people engaged in railroad transportation, and to those exporting from our ports equal terms in passing their merchandise through these

canals. This absolute equality of treatment was the consideration for concessions on the part of this Government made in the same article of the treaty, and which have been faithfully kept. It is a matter of regret that the Canadian Government has not responded promptly to our request for the removal of these discriminating tolls.

In another message, of July 1, 1892, he says:

There can be no doubt that a serious discrimination against our citizens and our commerce exists, and quite as little doubt that this discrimination is not the incident but the purpose of the Canadian regulation.

This question was taken up in Congress, and the House and Senate by a unanimous vote authorized the President to issue a proclamation to take steps in retaliation. In pursuance of this Act, which was passed July 26, 1892, President Harrison, on the 18th of August, 1892, issued the following proclamation:

And whereas the Government of the Dominion of Canada imposes a toll amounting to about 20 cents per ton on all freight passing through the Welland canal in transit to a port of the United States, and also a further toll on all vessels of the United States and on all passengers in transit to a port of the United States, all of which tolls are without rebate; and

Whereas the Government of the Dominion of Canada, in accordance with an Order in Council of April 4, 1892, refunds 18 cents per ton of the 20 cent toll at the Welland canal on wheat, Indian corn, peas, barley, rye, oats, flaxseed and buckwheat, upon condition that they are originally shipped for and carried to Montreal or some port east of Montreal for export, and that if transshipped at an intermediate point such transshipment is made within the Dominion of Canada, but allows no such nor any other rebate on said products when shipped to a port of the United States or when carried to Montreal for export if transshipped within the United States; and

Whereas the Government of the Dominion of Canada by said system of rebate and otherwise discriminates against the citizens of the United States in the use of said Welland canal, in violation of the provisions of article 27 of the treaty of Washington concluded May 8, 1871; and

> Whereas said Welland canal is connected with the navigation of the Great Lakes, and I am satisfied that the passage through it of cargoes in transit to ports of the United States is made difficult and burdensome by said discriminating system of rebate and otherwise and is reciprocally unjust and unreasonable;
>
> Now, therefore, I, Benjamin Harrison, President of the United States of America, by virtue of the power to that end conferred upon me by said Act of Congress approved July 26, 1892, do hereby direct that from and after September 1, 1892, until further notice a toll of 20 cents per ton be levied, collected and paid on all freight of whatever kind or description passing through the St. Mary's Falls canal in transit to any port of the Dominion of Canada, whether carried in vessels of the United States or of other nations; and to that extent I do hereby suspend from and after said date the right of free passage through said St. Mary's Falls canal of any and all cargoes or portions of cargoes in transit to Canadian ports.

From this action of the American Government with respect to a discrimination or what was regarded as discrimination on American vessels passing through the Welland canal, one can learn how the term "equality" was construed in 1892, just twenty years ago. President Cleveland declared that the rebate of 18 cents per ton on Canadian freight was unfair treatment, "showed a narrow and ungenerous commercial spirit," "was to fulfil a promise with the shadow of performance," and recommended that the action of the Canadian Government should be "measured by exactly the same rule of discrimination."

President Harrison said February 23rd, 1892:

"The matter of canal tolls of treaty rights were flagrantly disregarded." And again in a message of June 20th, 1892, he said: "It is wholly evasive to say that there is no discrimination between Canadian and American vessels;" and again in his proclamation of August 18th, 1892, he said:

> The passage of cargoes through the Welland canal in transit to ports in the United States is made difficult and burdensome by said discriminating system of rebate and otherwise, and is reciprocally unjust and unreasonable.

In closing this speech, already too long, I may be allowed to summarize as briefly as possible the position of Canada with regard to the action of Congress at its last session.

1. We accept the interpretation of Congress of the Hay-Pauncefote Treaty with regard to our foreign trade, as it places our foreign trade on the same basis as the foreign trade of the United States and of "all nations."

2. It is not necessary for our purpose that we should dispute the right of the United States to allow its own coastwise shipping the free use of the Panama canal, provided a similar privilege is extended to the coastwise shipping in Canada. We insist that there shall be no "discrimination," and that the terms "entire equality" shall apply to our shipping whether or not the United States imposes tolls on its own coastwise shipping or permits such shipping the free use of the canal.

3. In every treaty affecting the canal since the first treaty of 1846 with New Granada down to the Hay-Pauncefote Treaty of 1901, the avowed policy of all parties to such treaties was that the canal should be open on terms of equality to all nations, and that this view was strengthened by lapse of time is shown in the definite and comprehensive terms of the Hay-Pauncefote Treaty to that end.

4. That every President of the United States, from President Polk to President Roosevelt, in their written messages to Congress, confirmed this view in terms even more comprehensive than the restricted language of the treaties concerned.

5. That in the diplomatic correspondence of several Secretaries of State, no indication whatever was given that the United States, as a party to the treaties, claimed to itself any preference or right to which all nations affected by the treaty would not be equally entitled.

6. That the action of the United States with regard to the alleged discrimination of Canada in the use of the Welland canal by American shipping shows how strictly the Washington treaty was construed where American interests were involved, and that the example of Canada in that case encourages the hope that the United States will remove all discrimination against Canada's coastwise shipping.

7. That to retain the present tolls on Canadian coastwise shipping, contrary, as I believe, to the letter and the spirit of the Hay-Pauncefote Treaty, will be regarded in Canada as an injustice tending to disturb the friendly relations between two great countries, which have a mutual interest in developing the resources of North America, and in facilitating transportation between its widely separated coasts and seaports, and also to deepen the impression that every treaty between the United States and Great Britain, in which we were interested, was interpreted to the disadvantage of Canada territorially and commercially.

With this summary, the only question that now remains to be considered is: Have we any remedy? We cannot submit quietly to injustice, particularly where such important interests are concerned, nor should we resort to retaliation, unless all other efforts to obtain redress have failed. We have enjoyed one hundred years of peace with the United States, although the atmosphere has several times been more or less agitated by differences, all of which, happily, have been settled either by arbitration or by diplomatic correspondence with the Government at Washington. We have every confidence that, in this case, what diplomacy has done before it will do again, and if the Government of Canada has not already remonstrated against the action of Congress, it is to be hoped it will do so without delay. I have every confidence in its anxiety to protect Canadian interests, and that in doing so, within the limits of diplomatic courtesy, it will be supported by the people of Canada.

Should the Washington Government still refuse, notwithstanding the protest from Canada, or from the Foreign Office, or from the Imperial Government, which has already, I understand, entered a protest, then an appeal should be made to the Hague Tribunal, to which the Government of Great Britain and the United States have bound themselves to submit the interpretation of treaties. Canada is willing to abide by the decision of that Tribunal. If we have no rights under the Hay-Pauncefote Treaty, we are prepared to abide by the result. We believe that the best men in the United States consider such an appeal eminently proper, and that any refusal on the part of the United States to refer the question to the Hague Tribunal would be discreditable to the American nation. On this point let me quote from a speech delivered by ex-Secretary of State Elihu Root, before the New York Chamber of Commerce. He said:

> We are now approaching a question which will test the willingness of the American people to be true to the ideals of self-government, showing that a democracy can be honorable and just. Under an agreement made regarding the Panama Canal, Great Britain retired from her position and signed over to the United States all the rights she had under the partnership agreement. It was specified that the ships of all nations were to have the same treatment.....Our Congress passed a law which gives free transit to American ships engaged in the coastwise trade while passing between our Atlantic coast and our Pacific coast, while tolls are to be imposed upon British ships passing between British ports on the Atlantic and British ports on the Pacific, and upon all other foreign ships. The question now is, what is to be done about it? We have a treaty with Great Britain under which we have agreed that all questions arising upon the interpretation of treaties shall be submitted to arbitration, and it seems hardly conceivable, yet there are men who say that we will never arbitrate the question of the construction of that treaty (the Hay-Pauncefote Treaty), and I say to you that if we refuse to arbitrate it we will be in the position of the merchant who is known to all the world to be false to his promises. (Applause.)....Among all the people of the earth who hope for better days of righteousness and peace, we will stand, in the light of our multitude of declarations for arbitration and peace, discredited, dishonored hypocrites, with the fair name of America blackened, with the self-respect of Americans gone, with the influence of America for advance along the pathway of progress and civilization annulled, dishonored and disgraced. That question stands among us, and no true American can fail to use his voice upon that question for his country's honor. (Applause.) If we are lovers of liberty and justice, if we are willing to do as a nation what we are bound to do as individuals in our communities, then all the questions we have been discussing will be solved right, and for countless generations to come Americans will still be brothers as they were of old, leading the world towards happier lives and nobler manhood, towards the realization of the dreams of philosophers and of the prophets for a better and a nobler world.

If I were expressing the opinion of Canada in regard to the Treaty and in regard to the action of the American nation, I would even hesitate to use such forcible language as I have quoted from ex-Secretary Root, but he is not alone in this opinion. The leading journals of the United States, from New York to San Francisco, have expressed themselves in terms equally forcible.

I shall, therefore, content myself in assuming the attitude with regard to Canada which President Cleveland assumed in the dispute over the tolls on the Welland Canal. "A government does but half its duty when it protects its citizens at home and permits them to be imposed upon and humiliated by the unfair and overreaching disposition of other nations."

To these words let me add that the Senate of Canada will be doing but half its duty if it does not render such assistance as in its power lies to sustain the government in enforcing the rights of Canada in the present instance, and in supporting any effort it may make to see those rights vindicated, and justice done to the Canadian people.