

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."