

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