

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.

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