"The one document in which the facts are best set forth is the report of Senator Cushman K. Davis, of Minnesota, the chairman of the Senate Committee on Foreign Relations, presenting to the Senate the first Hay-Pauncefote treaty. * * * If the time shall come when it will be necessary for our Government to contend before an international tribunal concerning our rights and obligations and duties under these isthmian treaties, this report of Senator Davis will be the best evidence and almost conclusive evidence that by the terms of them the United States is bound to give equal rights to all nations and to all commerce and all citizens in the use of this transoceanic waterway. * * *

"There is a personal aspect to this discussion as to the views and attitude of Senator Davis which I ask leave of the House to discuss and, I think, settle right here. It has been stated in debate here and elsewhere and in various reports, that Senator Davis believed this Hay-Pauncefote treaty allowed discrimination in favor of our coastwise commerce as against other nations. Various sincere and honorable gentlemen have stated from their recollection of his position, that such was his opinion. I had the pleasure of knowing Senator Davis very intimately and for many years, and my recollection is entirely to the contrary. I did not desire to rest on my own memory, so I have reinforced it by consulting those who were most intimate with him, his business, personal and social associates,
and their recollection in every respect agrees with my own. But, of course, this is merely a difference of opinion and recollection among equally sincere and honest men as to a matter which occurred several years ago, so frequently found in the experience of all of us. But fortunately there are records which lift the difference out of the realm of mere recollection and settle it by what Senator Davis in his own writings and in his own record, has stated what he actually did believe. * * * I know you will agree with me from them, that he believed that this waterway should be constructed and operated on terms of treatment of entire equality of the citizens and commerce of all nations.

* * *

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 practical, 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.

That the United States would not, if they could, obtain any exclusive right or privilege in a great highway which naturally belongs to all mankind.

That while they aim at no exclusive privilege for themselves, they could never consent to see so important a communication fall under the exclusive control of any other great commercial power.

* * *

In the origin of our claim to the right of way for our people and our produce, armies, mails and other property through the canal, we offer to dedicate the canal to the equal use of mankind.

As to neutrality and the exclusive control of the canal and its dedication to universal use, the suggestions that were incorporated in the Clayton-Bulwer treaty came from the United States and were concurred in by Great Britain. In no instance has the Government of the United States intimated an objection to this treaty on account of the features of neutrality, its equal and impartial use by all other nations.
Thus the United States from the beginning, before the Clayton-Bulwer treaty, took the same ground that is reached in the convention of February, 1900, for the universal decree of the neutral, free and innocent use of the canal as a worldly highway, where war should not exist and where the honor of all nations would be a safer protection than fortresses for its security. From that day to this these wise forecasts have been fulfilled, and Europe has adopted in the convention of Constantinople the same great safeguard for the canal that was projected by Mr. Cass in 1857.

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 equity to the ships and commerce of the world.

* * *

The United States cannot take an attitude of opposition to the principles of the great act of October 22, 1888, without discrediting the official declarations of our Government for fifty years on the neutrality of an isthmian canal and its equal use by all nations, without discrimination.

To set up the 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 is to be built.

But the location of the canal belongs to other Governments, from whom we must obtain any right to construct a canal on their territory, and it is not unreasonable, if the question was new and was not involved in a subsisting treaty with Great Britain, that she should question the right of even Nicaragua and Costa Rica to grant to our ships of commerce and of war extraordinary privileges of transit through the canal.

It is not reasonable to suppose that Nicaragua and Costa Rica would grant to the United States the exclusive control of a canal through those States on terms less generous to the other maritime nations than those prescribed in the great act of October 22, 1888; or, if we could compel them to give us such advantages over other nations, it would not be creditable to our country to accept them. * * *
In time of war as in time of peace the commerce of the world will pass through its portals in perfect security, enriching all nations and we of the English-speaking people will either forget that this grand work has ever cost us a day of bitterness; or we will rejoice that our contentions have delayed our progress until the honor has fallen to our grand Republic to number this among our best works for the good of mankind.

"In this report the Senator quoted at some length from the letter of the Secretary of State Clayton to Minister Rives, of France, in the framing of the first Clayton-Bulwer treaty. He evidently desired to emphasize what he considered the most important thoughts in the letter and so has italicized and underscored, evidently with his own hand, what he desired should be especially kept in mind. I will read these paragraphs so you can judge exactly what Senator Davis believed to be of the greatest importance:

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.

That the United States would not, if they could, obtain any exclusive right or privilege in a great highway which naturally belonged 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 great commercial power.

"You will note from these emphasized sentences that Senator Davis believed not only that we did not intend any discriminative treatment in the use of the canal, but he further believed it would be dishonorable to so do.

"When Senator Davis considered this treaty, and his
statement was he had given much consideration to it, he believed that it did not fully protect the rights of the United States, so he prepared what is known as the Davis amendment, as follows:

Your committee therefore report the following amendment to the pending treaty:

Insert, at the end of Section 5 of Article II, the following:

It is agreed, however, that none of the immediately foregoing conditions and stipulations in sections numbered 1, 2, 3, 4 and 5 of this article shall apply to measures which the United States may find it necessary to take for securing, by its own forces, the defense of the United States and the maintenance of public order.

"The very basis for this amendment, the very foundation for its consideration, was that these paragraphs, 1, 2, 3, 4 and 5, did apply to and bind the United States, and because they did so apply and bind our Government, Senator Davis did not believe they should be construed to prevent the United States doing as it found necessary for its own defense. So he prepared this amendment, based on the contention that paragraph 1 did apply to the United States. Now, here is paragraph 1, which under this amendment did apply to the United States:

1. The canal shall be free and open, in time of war as in time of peace, to the vessels of commerce and of war of all nations on terms of entire equality, so that there shall be no discrimination against any nation, or its citizens or subjects, in respect of the conditions or charges of traffic, or otherwise.

"This obligation, then, applied to the United States, and under it 'vessels of all nations' must be treated on terms of entire equality and there could be 'no discrimination in favor of any nation, its citizens or its subjects, as to the charges or conditions of traffic, or otherwise.' That
The amendment was based on the proposition admitted by everybody that the United States was one of those nations to which this section applied, under which it could not receive any discrimination and must be treated with 'entire equality.'

"That amendment came before the Senate for a vote, and here is its result: Yeas, 65; nays, 17."

Representative Stevens concludes as follows:

"Sixty-five Senators declared that the United States was one of 'all nations,' and could not have any discrimination, and this record cannot be impeached as to its contents and the logical conclusion to be deduced from it."

We will continue the narrative with excerpts from a speech by Senator McCumber. The foregoing excerpts from the Davis report are also found in this speech, and so should be considered a part of these excerpts. The following sentence from the Davis report is a suitable introduction to the long quotation from the Senator's speech:

"The Suez Canal makes no discrimination in its tolls in favor of its stockholders. * * * and, taking its profits or the half of them as our basis of calculation, we will never find it necessary to differentiate our rates of toll in favor of our own people in order to secure a very great profit on the investment.

"There is the foundation upon which we based our belief at that time that we should bind ourselves to accord the same treatment to our vessels as we should accord to the vessels of the world. Before us at that time was a schedule of rates of toll that could be charged, an estimate of the number of vessels, including our vessels engaged in foreign trade and our coastwise vessels, which would make
use of the canal, and upon that we made our estimate of the value of the canal. With that explanation Senator Davis said we were to treat every nation the same as we treated our own and to rely for our compensation on our investment upon the tolls and upon the special benefit of being brought closer to our sea possessions.

"Senator Davis declared in that report before the Senate that we furnished the money to build that canal as a venture; that we took the chance of whether it would be profitable or unprofitable; that we were not compelled to divide our profits with the nations of the world if it were profitable, nor to call upon the nations of the world if it did not prove a success. We believed that it would prove a success. The reports that had been made to us upon the basis of one-half of the tolls of the Suez Canal assured us that it would be a success. That calculation took into consideration tolls on our coastwise vessels.

"What could the Senate have understood? What could any Senator have understood by the words:

We will never find it necessary to differentiate our rates of toll in favor of our own people in order to secure a very great profit on the investment.

"Let me ask Senators candidly: Did or did not those words mean that this treaty prohibited us from differentiating between our own vessels and the vessels of other nations? If it did not so mean, then what on earth did it mean; and what did Senator Davis mean when he used those words? Can you make a declaration of construction stronger or more emphatic than these words make that construction?

"No, we all understood; Mr. Hay understood, Lord
Pauncefote understood, and the Senate of the United States understood that under the terms of this treaty we could not differentiate between our own ships and the ships of foreign countries. That declaration was the keynote of the eloquent address that was made by Senator Davis. I cannot pass from his declaration without inserting his final eloquent tribute to this great project:

In time of war, as in times of peace, the commerce of the world will pass through its portals in perfect security, enriching all the nations, and we of the English-speaking peoples will either forget that this grand work has ever cost us a day of bitterness, or we will rejoice that our contentions have delayed our progress until the honor has fallen to our grand Republic to number this among our best works for the good of mankind.

"For the good of mankind was our glorious boast in 1900. For the special good of ourselves and mankind be damned is the construction we seek to place upon that treaty in 1914. * * *

"Senator Morgan submitted a minority report; and although he differed with the majority upon certain questions, that eminent scholar and historian agreed entirely with the report of the majority when he said:

The treaty under consideration is for the avowed purpose of removing any objection that may arise out of the convention of April 19, 1850, commonly called the Clayton-Bulwer treaty, to the construction of such canal under the auspices of the United States, without impairing the general principle of neutralization established in Article VIII of that convention.

That general principle, as it is modified or specially defined in this treaty, is all that is left of the Clayton-Bulwer treaty, as now being in continuing force.

"There was no misunderstanding as to what that general principle was. Says Senator Morgan in his report:
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All that is left of this general treaty is the general principle provided in Article VIII of the Clayton-Bulwer treaty. That is, that the vessels of all nations using the canal should be treated with exact equality, without discrimination in favor of the vessels of any nation.

“Again, Senator Morgan says:

Then this convention, in Article II, proceeds to define and formulate into an agreement, intended to be world-wide in its operation, 'the general principle of neutralization,' established in Article VIII of the Clayton-Bulwer treaty on the basis of the treaty of Constantinople of October, 1888, relating to the Suez Canal.

Nothing is given to the United States in Article II of the convention now under consideration, nor is anything denied to us that is not given or denied to all other nations.

“That was the understanding with those who followed Senator Morgan in his views, and you will see how they explain and fit in with the views of those who opposed Senator Morgan's contention. You will notice how the words used by him in relation to the general principle dovetail with the words used in the treaty itself and in the old Clayton-Bulwer treaty, 'on the basis of the treaty of Constantinople of October, 1888, relating to the Suez Canal,' and those tolls were the same to every other nation, no matter what the ownership of the canal might be.

“I have already quoted to you the words in the treaty, that the high contracting parties adopted as the basis of such neutralization the following rules, substantially as embodied in the convention between Great Britain and certain other powers, signed at Constantinople, October 20, 1888, for the free navigation of the Suez maritime canal—that is to say:

The canal shall be free and open in time of war as in time of
peace to the vessels of commerce and of war of all nations, on terms of entire equality, so that there shall be no discrimination against any nation or its citizens or subjects in respect of the conditions or charges of traffic or otherwise.

"We adopted the Suez Canal regulations, which prohibited favoritism on account of coastwise or other trade.

"There was inserted in the Record last year an article written by Mr. Feuille regarding tolls on the Panama Canal, in which he asserts that the word 'neutralization' used in the Hay-Pauncefote treaty and in the Clayton-Bulwer treaty had reference only to its freedom of use and protection from warlike acts rather than tolls. And his whole argument was based upon that false assumption, because the 'general principle of neutralization' established in Article VIII of the Clayton-Bulwer treaty was not left to any false construction, but the Hay-Pauncefote treaty declares what was intended by those words, and sets forth seven specific propositions that are included in the words 'general principle of neutralization,' the very first of which is the declaration that there shall be no discrimination against any nation or its citizens or subjects in respect of the conditions or charges of traffic or otherwise. We all know that the rules provided for the operation of the Suez Canal do not exempt the shipping of any owner or stockholder, and when we adopted the Suez regulations we knew we could not claim an exemption as owner.

"I have presented this much of the proceedings in the Senate at the time of the adoption of the Hay-Pauncefote treaty to demonstrate beyond any possible contention that the Senate as a whole, those who listened to the debate or took part in it, did comprehend and clearly comprehend that the
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treaty was being pressed for adoption upon the theory of construction that it bound the United States to claim no privileges for its own vessels of any kind that it did not accord to other vessels. Thus we have the positive, certain declarations, as set forth in the report, to establish that view beyond contention. But we need not stop there; we have the negative action of the Senate supporting the same view.

"I was present, I think, during all of the debates on the treaty. I cannot be certain that I was in the Senate Chamber every moment, but I do not now recall being absent. It was my first year in the Senate; this was a great question. I took a deep interest in it at that time, and all of the proceedings are impressed upon my mind more indelibly than anything that has happened since. And yet I never heard during all of that debate, either upon the original treaty when it first came before us or upon the modified treaty which was afterwards agreed to by Great Britain, and which came before us the second time, any contention on the floor of the Senate that the construction placed upon it by the authors of the treaty, the committee to which it was referred, were not borne out by its words. With my strong views against the remission of tolls to our vessels, either coastwise or others, I am certain that I never should have voted for that treaty had I supposed that it would have at any time been given a different construction by the Senate or the Congress of the United States. I should have insisted that it be made certain.

"We not only failed to make any such claim, but by a vote of forty-three to twenty-seven we declared against the policy of freeing any of our own vessels from these
tolls. Senator Bard, who represented a constituency whose great cities would be benefited by a provision for free tolls for our coastwise vessels, introduced an amendment for that purpose, as follows:

Strike out all of Article III and substitute the following:

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

"When he proposed that amendment did he believe this agreement gave us the authority without that amendment? * * * Can you imagine that that amendment could come up without being debated or without anything being said about it? Is it possible that the Senate did not debate that question? They did debate it, and they contended that it ought not to be a part of the treaty. That was the reason it was stricken out.

"We were considering a solemn obligation between two of the greatest countries in the world—an obligation between two countries which had made louder proclamations and more persistent assertions in favor of national integrity than any other countries in the world. If we were honest it was incumbent upon us at that time to prevent either of these countries getting into a position in their contractual relations with each other where either they or the other great nations of the world could challenge their sense of national honor. If there was a misunderstanding it was the duty of every Senator, under my code of ethics, to have so declared in the open Senate and to have attempted, so far as he was able to do so, to free the instrument from any uncertainty."
"Suppose I were drafting a private contract with the Senator from Colorado and there were within that contract a certain clause, and he asked me what I understood that clause to mean and I told him what I understood it to mean, and he said, 'That is just what I understood it to mean, and with that understanding we will sign it.' In what position would I be to come around, ten years afterwards, and say, 'Though we agreed as to what the construction should be, nevertheless it is open, according to its real words, to some other construction, and therefore I propose to give it a different construction'?

"Believing that it was certain, Senator Bard introduced his amendment. That amendment was voted down by a vote of forty-three to twenty-seven. By that vote we renounced forever a claim that we could remit these tolls.

"I am well aware that some time after Senator Bard had left the Senate, and in the debates of about a year ago, some Senator introduced a letter from ex-Senator Bard, in which he stated, in substance, as I now remember it, that he thought that there were votes against his amendment on the ground that we had the right to remit the tolls without this amendment. I am very certain that he did not say that anyone ever said so, but that he thought it was voted down on that theory.

"I cannot believe that there were many Senators who took that position. Certainly none in the open debate, and every Senator knew that it was contrary to the general understanding of the Senate.

"With the construction that was placed upon the treaty by those reporting it, it would have seemed to have been our
duty, if we had had a different view, to have voted for the Bard amendment so as to make that question certain. We must either say that we did not think so, or else we must admit that we were carrying in our minds a secret conviction that we could violate that provision of our treaty, knowing that the other party to the contract held a different view. Such action on our part would, according to my view, be very far from proper international as well as individual ethics.

"Every man in the Senate today recognizes not only the clear legal mind of Senator Bacon, but also his absolute candor in debate. He voted for the Bard amendment. He has left in no unmistakable terms what was understood by that vote. While I was discussing that question in the Senate in 1912 Senator Bacon asked permission to interrupt in support of my contention. The Record discloses the following:

MR. BACON. If the Senator will permit me, I think he could state it a little stronger than he did when he used the word renounced.

"I have stated that we renounced our claim of a right to eliminate our coastwise trade from the operations of the treaty."

Then he says:

We were then engaged in the making of a new treaty with Great Britain, and, of course, if Great Britain would have agreed to that arrangement it would have been a legitimate contract and covenant between the two. What the Senate of the United States then did was to decline even to make that demand upon Great Britain. We declined to say that we would contend for that. We not only by that action, in fact, recognized that there was an obligation of that kind under the Clayton-Bulwer treaty, but we declined to contend that that should be surrendered by Great Britain and that a new contract should be made, to which they would not have agreed.
I wish to say, if the Senator will pardon me a moment, in this connection, as I am one of those recorded as voting in favor of the Bard amendment, that my idea at that time was not that any part of the merchant marine of the United States should have free transportation or free right of passage through the canal, but I was standing simply upon the ground that I thought the United States should have the right to control whatever tolls were imposed and discriminate in favor of our own citizens if we saw fit to do so.

"There was an honest statement of what he meant.

I do not wish myself to be considered as being committed by that vote to the principle of free passage for American ships in the canal.

MR. MCCUMBER. I think the vote was clearly a declaration of our intent and purpose not to demand free tolls for our own coastwise trade. That is all that I am citing it for.

MR. BACON. That would be true; and further than that, not to discriminate, that even if we charged tolls we would charge no greater tolls for the ships of foreign countries than for the ships of our own country.

"Mr. Bacon gave the full truth of what the understanding of the Senate was when we voted upon the Bard amendment.

"And so both affirmatively in debating the treaty and negatively in voting down an amendment to release our coastwise vessels from the payment of tolls have we declared our purpose to maintain the policy of nondiscrimination which has been the continuous policy of this country for nearly a hundred years.

"Remember that the South American nations have rights here as well as Great Britain and the United States.
They must necessarily have more or less of a coastwise trade.

"In agreeing to the Hay-Pauncefote treaty it was the purpose of the United States to place itself exactly in the same position it would have been in had the canal been constructed by France, by Nicaragua, or any other Central American state. We claimed no special privileges, because the money represented our investment. It was believed that the tolls charged and the benefits derived specially by the United States would compensate us for the investment.

"Senator Davis, in his report on the Hay-Pauncefote treaty, declared this its purposes in concise language, and asserted boldly that the United States was to obtain no other privileges than those granted to the nations of the world.

"Back of the claim of right to free our own ships from the payment of tolls and the real basis of the claim is that we paid for the canal with our own money, that we own it and ownership should carry with it the right to do as we please. Yes, we do own it. But we bought the right to construct that canal on foreign territory, and the purchase price for the right to build and operate that canal was that we should forever maintain its neutrality and guarantee equality of treatment to the vessels of all nations. Can we now honorably claim the right and repudiate the consideration?

"The importance and validity of this consideration and our moral duty to fulfill its obligations will be made more apparent as we view the conditions which preceded it. Prior to the Clayton-Bulwer treaty of 1850, two great powers were the sovereigns of all the territory of
North America, except Alaska, north of the Mexican border. The proportionate importance of Canada and the United States was less striking than it is today. The Atlantic and Pacific coast line of Canada was even greater than that of the United States. In addition to this great British possession north of us, that country had her Caribbean possessions, the Bermudas, the Bahamas, British Guiana, British Honduras, and other islands. She also exercised a protectorate over a vast stretch of country on the eastern shore of Central America known as the Mosquito Coast. She was then in possession of the entrance to what was then regarded as the only feasible canal route across the Isthmus. Both the United States and Great Britain were interested in a communication between the two oceans for the benefit of their respective coast lines. The United States beheld Great Britain in possession of that territory which seemed to be the key to an isthmian canal. We feared, and justly feared, the control of such a connecting waterway by any foreign Government; and, therefore, the United States, not Great Britain, asked audience to the end, not that we should obtain an advantage over British rights in any canal that might connect the two oceans, but that Great Britain should not hold an advantage over us. That diplomatic audience was granted at the solicitation of our Government, and we secured just what we asked for and conceded to the other party all the rights which we asked for ourselves. That general idea of neutral rights, equality of rights, has been maintained by both nations, down until after the adoption of the Hay-Pauncefote treaty.” * * *

“The two countries which joined in the Hay-Paunce-
fote convention had for so many years declared their respective policies toward the freedom and impartial use of any ship canal, had so made that policy a part of their political history, that it was thought by both nations that the mere reiteration of that policy was sufficient to insure its continuance without going into the details of all cases which it might cover and which it might not. It was the spirit of the policy that was to govern. The rules of the Suez Canal were known by both nations, and when they declared that the rules governing the Suez Canal should govern the Panama Canal, both felt that they had sufficiently particularized."

Did the vote on the Bard amendment reflect the judgment of the then United States Senate? We have already given the convincing argument of Senator McCumber that it did. Searching examination of the Congressional Record sustains the Senator's contention. Representative Stevens ably sustains the Senator in the following:

"When the first Hay-Pauncefote treaty was before the Senate for ratification on December 13, 1900, the following proceedings appear on page 15, Senate Document No. 85, Fifty-seventh Congress, first session: 'On the question to agree to the amendment proposed by Mr. Bard, to wit: Strike out Article III and substitute the following: Article III. The United States reserves the right in the regulation and management of the canal to discriminate in respect of the charges of traffic in favor of vessels of its own citizens engaged in the coastwise trade.' It was determined in the negative: Yeas, 27; nays, 43.

"This would also seem to show conclusively that no such a provision was intended to be in the treaty or could
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in any way be implied or inferred from its terms, or such an amendment would not be offered. The fact that it was rejected shows the Senate understood such fact, did not want such provision, but desired to preserve and maintain the general principle of 'equality and neutrality,' so clearly set forth in the report of Senator Davis and the memorandum of Secretary Hay accompanying the submission of the treaty, and in this way preserve the uniform and continuous policy as to the canal for more than fifty years. This action of the Senate was so overwhelming that no attempt was made by anyone to offer such an amendment to the second treaty.

"To explain and offset this conclusive evidence that no discrimination was intended by the Senate or could be had for the coastwise trade, the minority, on page 4 of the minority report, inserted a sentence from a private letter of Senator Bard which states:

When my amendment was under consideration it was generally conceded by Senators that even without that specific provision the rules of the treaty would not prevent our Government from treating the canal as part of our coast line and consequently could not be construed as a restriction of our interstate commerce, forbidding the discrimination in charges for tolls in favor of our coastwise trade, and this conviction contributed to the defeat of the amendment.

"To show how much Senator Bard actually knew about that subject in comparison with the other Senators who had a great interest and knowledge of it, it is only necessary to examine his legislative proposition as it appears from the records of the Senate. Senate Document No. 85, Fifty-seventh Congress, first session, page 15, shows the following:
On the question to agree to the amendment proposed by Mr. Bard, to wit, Strike out Article III and substitute the following: Article III. The United States reserves the right in the regulation and management of the canal to discriminate in respect of the charges of traffic in favor of vessels of its own citizens engaged in coastwise trade.

"The text of the treaty shows Article III of the original treaty to read as follows:

The contracting parties will immediately upon the exchange of the ratifications of this convention bring it to the notice of the other powers and invite them to adhere to it.

"So that the amendment was not germane as offered, was not in the right place, was not proposed to the right article or section, and, finally, Article III had already been stricken out of the treaty on a motion by Senator Foraker. Senate Document No. 85, page 13, above referred to. Yet this evident misinformation, carelessness and lack of knowledge as to what was actually going on is offered as a basis for reversing the policy and history of our Nation and violating its solemn pledges to the world. The other Senators who now so vigorously recollect are shown to have previously voted that the United States was to be included within the term 'all nations' without any qualification or exception. Their records and their memories do not seem to agree."

Former Senator Fairbanks declares emphatically that:

"The Bard amendment was voted down, after full discussion, not because it was regarded as surplusage, but because in the opinion of a large majority of the Senate it was violative of the spirit of equality, which had been expressed in the treaty."
The following colloquy from the hearings before the Committee on Interoceanic Canals, United States Senate, shows what the then United States Senate considered to be the matter of controlling importance and upon what its attention was focused:

"SENATOR PAGE. I would like to know, if I can, just what the Senator thinks about this question of free tolls for the United States coastwise vessels at the time the second Hay-Pauncefote treaty was being considered. Speaking from your own knowledge, as one of the Committee on Foreign Relations, as well as a member of the Senate, at the time of the passage of the act, can you say without qualification that in your judgment the Hay-Pauncefote treaty would not have been ratified by the Senate if it had believed that the United States could not under that treaty exempt its coastwise vessels from tolls?

"MR. FORAKER. No; I cannot say that without qualification. I can say this, that it is my impression, however, and it was certainly my understanding, that we were making a treaty under which we could do anything we saw fit to do with respect to our own vessels. We could exempt them from tolls, if we wanted to; but that was not seriously considered at that time because it was to be an enterprise that would cost a great deal of money, and I think now that, in so far as I can recall, the state of my mind on that subject—in so far as I had any mind on the subject—was that it would be a long time before we would reach a place where we would want to exempt anybody from the payment of toll who wanted to use the canal. But the right of the United States to
pass through any ships she saw fit was unquestionably the prevailing thought in the Senate, according to my understanding. We would not think of charging our battleships anything or our own revenue cutters anything for passing through the canal which we had built with so much money, and in no instance would we think of doing with our own ships anything except what our own best interests might justify us in doing. All other nations were to be on terms of absolute equality with respect to the use of the canal. That was the prevailing thought I had and we did not want any infringing, because we were building it primarily as a war necessity—a measure of defense, and not for the purpose of commerce.

* * *

"SENATOR BRANDEgee. It has been stated here by several witnesses that one of the principal objects in the construction of the canal was to lower the rates of the transcontinental railroads. What do you say about that?

"MR. FORAKER. I think the first great purpose of the canal was national defense; to transfer our navy back and forth from one side to the other as necessity might require. Our navy was not very large; that is, not large in proportion to our country. It is now much larger. Our country has two ocean fronts, and you had to go around Cape Horn to pass from one to the other. The fact of the Oregon having to go around the Horn during the Spanish-American War was the precipitating cause of the action we took.

"SENATOR BRANDEgee. I agree with you.

"MR. FORAKER. And national defense was the
primary purpose with the majority of Senators. I cannot say that it was the sole purpose."

"That was not seriously considered at that time" (see page 57) is important. But that that was seriously considered at that time by Great Britain is equally important. "National defense was the primary purpose with the majority of Senators"—see above. Equal and just tolls for all units of traffic using the canal was the primary purpose with Great Britain. Presumably each insisted on getting what it wanted most and the Hay-Pauncefote treaty construed in the light of history shows that each did get what it wanted most.

We can state this point in greater detail as follows: The United States needed the Panama Canal as a military and naval asset, and therefore sought the modification of the Clayton-Bulwer treaty with that end in view. Great Britain desired the construction of the canal because of its large commercial interests. The one sought ownership and control as a military necessity; the other sought conditions and charges of traffic that would be just and equitable—that would be equal for identical units of traffic using the canal. The paramount object desired by the two contracting parties was different. Final agreement was secured by writing into the Hay-Pauncefote treaty the controlling object of each of the two contracting parties. The United States secured thereby its desired military and naval asset. Great Britain secured thereby the assurance of equality in tolls between our nationals and its own subjects.

Representative Stevens throws light on the construction of treaties in the following:
"One of the most important considerations in the construction of Section 1, Article III as to 'equality of treatment without discrimination,' and as to whether an exception concerning our coastwise vessels can be implied from it, must be from the language of the preamble of the treaty. This preamble is in terms:

The United States of America and His Majesty Edward the Seventh, of the United Kingdom of Great Britain and Ireland, etc., being desirous to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans by whatever route may be considered expedient, and to that end to remove any objection which may arise out of the convention of the nineteenth of April, 1850, commonly called 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 VIII of that convention. * * *

"It is a fundamental principle of construction of all documents that such a preamble shows first of all the reason for the making and existence of the agreement, document, or act; and secondly, that the language of the document, treaty, and so forth, should be so construed, if reasonably possible, to give effect to such purpose. (Moore, 5 Dig. Int. Law, p. 249.)

"Thus it is important to ascertain what is the 'general principle' of neutralization established in Article VIII of the Clayton-Bulwer treaty, which must not be impaired by this treaty. This Article VIII has been previously set forth in terms, so need not here be repeated. "It will be noted that the general principle is established and embraces, first, protection to the canal; second, that the charges therein shall be just and equitable; and third, that it shall be open to the citizens and subjects of the
United States and Great Britain on equal terms, and also shall be open on like terms to the citizens and subjects of other nations willing to grant the same protection to the canal as do Great Britain and the United States. Subsequently, by agreement in the second treaty, the protection of the canal was confined and confined to the United States, without changing the other provisions of the 'general principle.'

* * *

"Secretary of State Olney, in 1896, in a memorandum on the Clayton-Bulwer treaty, said (Moore, 3 Dig. Int. Law, p. 207):

As Article VIII expressly declares, the contracting parties by the convention desired not only to accomplish a particular object, but to establish a general principle. This general principle is manifested by the provisions of the first seven articles, and is that the interoceanic routes there specified should, under the sovereignty of the States traversed by them, be neutral and free to all nations alike.

"The preceding articles of the treaty, which show the intent and purpose of the general principle, have already been described, and all together conclusively show that the term 'general principles' can bear no other construction with reference to the Hay-Pauncefote treaty than requiring 'equality of treatment of all vessels, foreign and domestic, coastwise and all,' and that there must be no discrimination as to charges or conditions of traffic of any nation, and that all charges and conditions should be just and equitable, must be an integral condition for neutralization of the canal.

* * *

"These are the same conditions set forth in Article III of the Hay-Pauncefote treaty, and on their face there
can be no possible exception of our commerce. Not only the language of the section but the very reason for the existence of the language forbids such exception.

* * *

"This has been the invariable construction of the treaties and of the policy of the United States from the beginning down to the present. There should further be noted the action of our Government in carrying out the \textit{general principle}, thus construed and defined in these treaties. President Roosevelt in his message of December 4, 1901, transmitting to the Senate the Hay-Pauncefote treaty, which was ratified and is now in effect, described it as a convention without impairing the general principle of neutralization established in Article VIII of the Clayton-Bulwer treaty. Further, on the twenty-second day of February, 1902, in the proclamation making such treaty effective, President Roosevelt, in the preamble to it, again sets forth the existence of the \textit{general principle} of neutralization which was to be maintained by such treaty, and in the final statement of the proclamation is found this clause, 'to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.'

"Thus the United States Government at once in the proper way notified the world in the exact language of the treaty itself of its intention to observe and fulfill every article and clause thereof in the exact terms of the treaty itself.

\textbf{SUEZ CANAL RULES}

"It is an elementary rule in the construction of treaties and statutes that where the provision in question has been
copied from those of another nation or state, where such provision has received a careful construction, that such construction would be of great value in considering the proper construction of the borrowed section. In this instance Article III of the treaty provides ‘that the United States adopts as a basis of the neutralization of such ship canal the following rules, substantially as embodied in the convention of Constantinople, signed October 28, 1888, for the free navigation of the Suez Canal. That is to say,’ then follow the six sections laying down the rules of neutralization and equality which shall apply to the Panama Canal.

“The article in the Suez convention relating to charges and tolls is as follows:

Article X. The high contracting parties, by application of the principle of equality as regards the free use of the canal (a principle which forms one of the bases of the present treaty), agree that none of them shall endeavor to obtain, with respect to the canal, territorial or commercial advantage or privileges in any international arrangements which may be concluded. * * *

“Other sections contain substantially the same provisions as in the other sections of Article III of the Hay-Pauncefote treaty.

“These sections have always been construed to forbid any discrimination in favor of or against the coastwise vessels or other trade of any of the contracting nations; and though Great Britain really has the controlling voice in the management of the canal, and France is the headquarters of the management, yet their vessels pay and are treated exactly the same as all others. * * *”

This shows that the United States as owner of the Panama Canal is not entitled to grant free transportation
through it to its coastwise shipping as a result of such ownership.

The following from Senator Burton's speech clinches the argument against the right of the United States to exempt the shipping of any of its nationals from the payment of the same tolls imposed on non-nationals:

"President Roosevelt, in submitting the second Hay-Pauncefote treaty, said:

It specially provides that the United States alone shall 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 guaranty of interference of any outside nation from any quarter.

"Again, he says, on January 4, 1904, in a 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 the following day, 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.

"Aside from correspondence and declarations relating to the proposed Isthmian canal, two negotiations remain very nearly contemporaneous with the date of the Hay-Pauncefote treaty, both of which are in entire accordance
with our settled national policy, but which in their bearing upon the interpretation of the Hay-Pauncefote treaty far outweigh all the preceding, not only because of the similarity in the questions involved but because of the further fact that they are so nearly contemporaneous with the negotiation of the treaty. The facts pertaining to them must have been clearly in mind when the treaty was framed. They are:

“Our negotiations in relation to the so-called open door in China in 1899 and succeeding years. [The other—the Welland Canal controversy—anon.] Great Britain, Germany, France, Russia and Japan were the countries regarded as possessing, though in unequal degrees, an advantageous position in China.

* * *

“Mr. Hay accordingly laid down certain principles which he desired should be formally declared by the Russian Empire and by all the great powers interested in China. Of these principles he said, they ‘will be eminently beneficial to the commercial interests of the whole world’: * * *

Third, that it will levy no higher harbor dues on vessels of another nationality frequenting any port in such “sphere” than shall be levied on vessels of its own nationality, and no higher railroad charges over lines built, controlled or operated within its “sphere” on merchandise belonging to citizens or subjects of other nationalities transported through such “sphere” than shall be levied on similar merchandise belonging to its own nationals transported over equal distances.

“Special attention is called to the third of the principles, the recognition of which was requested. It included a demand that no higher railroad charges over lines built,
controlled or operated within its sphere on merchandise belonging to the citizens or subjects of other nationalities should be levied than on similar merchandise belonging to its own nationals.

* * *

"We thus demanded equal use of the ports controlled by these various nations, equal privileges in trade, and, what is most significant of all, equal railroad rates upon railways constructed by Russia at great expense and extending into the interior through Chinese territory to a connection with railways within her own domains. * * *

"Not only was the treaty in accordance with our traditional policy, but negotiations had been initiated contemporaneously with the negotiations with the various nations in China for an 'open door,' and it would have been the height of inconsistency to have made the demand for equality of treatment in China and to have denied it in a treaty relating to an Isthmian canal.

"Our record was so uniform and unbroken that we could have taken no other ground. The attempt by John Adams and Franklin and Jay in the years 1782 and 1783 pointed a new way as emphatically and as decisively as any of the great principles which lie at the foundation of our Government."

Negotiations were begun with the clear understanding on the part of both Great Britain and the United States that the ships of all nations would be allowed the use of the canal on equal terms.

Henry White states the results of the first conference in the following:
Meaning of Hay-Pauncefote Treaty

“A brief, informal conversation followed, during which Lord Salisbury said nothing to leave me to suppose that he is unfavorably disposed—much less hostile—to the construction of the canal under our auspices, provided that it is open to the ships of all countries on equal terms.”

“Open to the ships of all countries on equal terms” was understood to mean:

“It is always understood by the United States and Great Britain that the parties constructing or owning the same shall impose no other charges or conditions of traffic thereupon than are just and equitable; and that the same canals or railways, being open to the citizens and subjects of the United States and Great Britain on equal terms, shall also be open on like terms to the citizens and subjects of every other State.”

Negotiations were closed with this understanding according to Ambassador Choate:

“I wrote to the chairman of the committee, Senator O'Gorman, inclosing to him, by the express permission of the Secretary of State, a copy of my letters to Secretary Hay between August 3 and October 12, 1901, the same that you have. To my mind they establish beyond question the intent of the parties engaged in the negotiation that the treaty should mean exactly what it says, and excludes the possibility of any exemption of any kind of vessels of the United States. Equality between Great Britain and the United States is the constant theme, and especially in my last letter of October 2, 1901, where I speak of Lord Lansdowne's part in the matter, and say 'He has shown an earnest desire to bring to an amicable settlement, honorable alike to both parties, this long and
important controversy between the two nations. In substance, he abrogates the Clayton-Bulwer treaty, gives us an American canal, ours to build as and where we like, to own, control, and govern, on the sole condition of its being always neutral and free for the passage of the ships of all nations on equal terms, except that if we get into a war with any nation, we can shut its ships out and take care of ourselves.'

"This was the summing up of our whole two months' negotiation."

Closed with the understanding embodied in the following, according to Secretary of State John Hay—

"All means all. The treaty was not so long that we could not have made room for the word 'other' if we had understood that it belonged there. 'All nations' means all nations, and the United States is certainly a nation."

"That was the understanding between yourself and Lord Pauncefote when you and he made the treaty?"

I pursued.

"It certainly was," he replied. "It was the understanding of both Governments, and I have no doubt that the Senate realized that in ratifying the second treaty without such an amendment it was committing us to the principle of giving all friendly nations equal privileges in the canal with ourselves. That is our golden rule."

Senator McCumber properly says:

"I cannot imagine how any Senator in this chamber who will read the history that precedes the Clayton-Bulwer treaty, who will read the Clayton-Bulwer treaty
following our declarations, and who will then read the declarations of this Government in all its statements from that time down to 1901, can for one moment question our great national policy of equality of treatment of all vessels which might use that canal. Then, when we come down to the conditions, the views of both Governments at the time we entered into the great obligation known as the Hay-Pauncefote treaty, when we stop and read the declaration of the British press and the declaration of the American press that coincide exactly, showing that the views of the two nations have never changed in the slightest degree, when we follow that up with the declaration of our negotiators * * * in which they declare over and over again that the general principles of neutrality enunciated in the Clayton-Bulwer treaty should not be violated or impaired by this Government, and when we follow that up by the declarations that are shown in the letters [of Ambassador Choate and Henry White] * * * I cannot conceive the possibility of any man's mind being so everlastingly prejudiced that he will close it to all this clear, unmistakable evidence of what they and we all understood this treaty to mean, and insist that notwithstanding all this we can read the treaty another way. Our duty is to read that treaty the way the parties understood it to mean when they signed it."

The matter, as indicated in the foregoing by Senator McCumber, was so fully settled by those who actually negotiated the Hay-Pauncefote treaty and the treaty with Panama—Hay-Bunau-Varilla—and knew the intent of the parties that the great English and American
common law doctrine of *stare decisis* as to the rights of the parties should apply if the doctrine could be enforced in view of the original partnerships and vested rights. We are plainly obligated to operate the Panama Canal "*for the benefit of mankind on equal terms to all.*"