Chapter II

Legal and Moral Aspects of Tolls-Exemption

Citizens of the United States should, as we see it, brush aside all personal, political and local considerations and approach the problem on a high moral plane and in a judicial frame of mind. We should turn a deaf ear to all race or religious appeals, and turn an equally deaf ear to the blair of party trumpets, however loud and thrilling, just as a judge should when he puts on his judicial robes and ascends the bench to decide a case of law on contracts, regardless of his personal preference, feelings or other considerations not a part of the record.

Careful examination of the record of the issue which has been made up; an issue which was begun, as far as the governing principles are concerned, as far back as 1826, which record is on file in the archives of all civilized Governments and of all large libraries of the world, constrained us to urge the repeal of this ill-considered act of Congress.

Before we, in that manner, go down not merely in American history, but in the history of the world, let us pause, examine the record again and reason together without race or party prejudice. Let us pause, and, with that immutable record before us, think again before we continue on a course with such far-reaching consequences.

So far as party platforms are concerned we will not
discuss them. They have no standing or authority in an international dispute of this character.

When the party platforms were adopted in 1912, this question was not an international, or national, issue. Only those people who took official part in formulating, negotiating and ratifying the treaties, and passing this act of Congress, were familiar with the terms of the treaties, and the intent of the high contracting parties as shown by contemporaneous acts and previous representations.

This is the first time the matter has ever confronted the American people as a live issue. The protest of a great and friendly nation made it impossible, in any degree of reasonableness or honor, to await the outcome of any kind of available national referendum.

Besides, it is not a national or domestic matter, but a diplomatic and international question of law and honor, based upon a record made up—a completed record. The unanimous vote of the American electorate, in favor of the act, and against the position of the President, would not change the facts, and the plain rights of the parties in connection with the international agreement under which the Panama Canal Zone was leased by the United States, the canal was built and must be operated, unless the agreement between the contracting powers is changed.

The Constitution of the United States is supreme and not a party platform if there is a conflict.

Article VI, Section 2 of the United States Constitution:

"This Constitution and the laws of the United States which shall be made in pursuance thereof and all treaties made, or which shall be made, under the authority of the
United States, shall be the supreme law of the land, and the judges in any State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

Members of Congress take an oath to uphold the Constitution of the United States on entering upon the duties of the office. That is more binding on them than a party platform. There ought to be no conflict between party platform and Constitution. If there is, the party platform should be revised at the earliest opportunity. Action should be in harmony with the Constitution.

We cannot understand the reasoning and the sense of proportion by which men with apparently the best and most honorable intentions, have placed adherence to party planks higher than a nation's solemn international obligations.

As stated in the preface to this work many entirely sincere persons have been led astray on the subject of Panama Canal tolls-exemption by the popular assumption of an entirely false promise as to the record title to the strip of land called the Canal Zone. Article XIV of the treaty with Panama states:

"As the price or compensation for the rights, powers and privileges granted in this convention by the Republic of Panama to the United States [notice, sovereignty is not mentioned] the Government of the United States agrees to pay $10,000,000 in gold coin of the United States on the exchange of the ratification of this convention and also an annual payment during the life of this convention, of $250,000 in like gold coin, beginning nine years after the date aforesaid."
It expressly states that only rights are granted and that during the life of the convention. These rights are granted for a price. The main reason for the attitude of most people, other than those interested in getting a discrimination in favor of coastwise shipping, is an impression, created by newspaper editorials, that the United States owns the Canal Zone, and that like the Erie and other canals it runs through our territory.

That phase of the matter is well covered in an editorial of a New York afternoon paper dated March 27, headed the "Panama Lease." It expresses the situation on that subject as shown by the record.

"When the canal strip was acquired it was not contended that this country had acquired sovereignty. The matter is discussed in President Roosevelt's message of January 4, 1904, written after the Panama revolution and the negotiation of the treaty with the new republic. The act of Congress of June 28, 1902, covering the preliminaries for the building of the canal, authorized the President to acquire from Colombia 'perpetual control' of a strip of land six miles wide over which this country, under the lease, was to have governmental jurisdiction. The Hay-Herran treaty negotiated with Colombia, whose rejection by Colombia precipitated the Panama revolution, so provided in practically the same language as that contained in the later treaty with Panama. In the message of January 4, 1901, Mr. Roosevelt discussed whether the Hay-Herran treaty conferred on us sovereign rights and whether Colombia was warranted in rejecting the treaty on this account. Says the message:

"'The treaty, instead of requiring a cession of
Colombia's sovereignty over the canal strip, expressed, acknowledged, confirmed and preserved her sovereignty over it.'

"It was never asserted until lately that the canal is exclusively our property. It was proclaimed over and over again that it was to be a neutral waterway for the benefit of the commerce of the world, with only so much control over it by us as was necessary to enable us to guarantee its neutrality and to provide properly for its guardianship and operation."

Senator McCumber says:

"When we build a canal in the United States we do not make a contract with any other nation. The fact that we did make a contract with another nation concerning the Panama Canal presupposes that we did not have a free hand to do just as we pleased, but that we were compelled to secure certain rights, and that to secure those rights we naturally were compelled to bind ourselves to certain conditions to do something on our part. And what we want to arrive at is what we agreed to do. * * * *

"The remission of tolls to our coastwise vessels, or to any other vessels belonging to the citizens of the United States or of any other country, is a clear violation of our international agreement. When the Senate of the United States voted in favor of the Hay-Pauncefote treaty it did so on the clear and unequivocal understanding that this treaty on which it was voting, irrespective of any and all previous utterances and declarations of the Government, and irrespective of whether the old Clayton-Bulwer treaty was alive or dead, did bind this country to treat all vessels
of the world on an equality with our own vessels. I will not say that there might not have been some individual Senator who might have carried in the secret chambers of his mind a conviction that he could at some future time, if called upon, give the treaty a different construction. What I do say is that if he had any such conviction he did not publicly disclose it in the debates, and he knew that the Senate as a body and the Committee on Foreign Relations which reported the treaty, as clearly shown in its reports, did understand that the treaty did bind us to this equality of treatment. And while there was a vigorous minority report by Senator Morgan, that minority report took no issue, but confirmed the construction placed upon the treaty by the majority.

"With these two reports before the Senate it would be a slander upon both its judgment and its sense of integrity to say that while without a word of protest it voted for this treaty that it nevertheless so voted with a secret conviction that these committee reports, which gave a certain construction to the Hay-Pauncefote treaty—a construction in harmony with the views of Secretary Hay and Lord Pauncefote—could at some future time be repudiated.

"I put this question squarely up to Senators on both sides of this Chamber: Admitting that the treaty by its terms does not preclude a construction authorizing us to discriminate in favor of our own vessels, but that both countries understood that it did so, that both Mr. Hay and Lord Pauncefote understood that it did preclude us from discriminating in favor of our vessels, and that the Senate when it confirmed the treaty knew that the parties under-
stood it that way, and the Senate as a whole understood it the same way, would you then declare that, notwithstanding this mutual understanding, we should give it a construction contrary to what was then understood?

"Or, putting it in another form, if the contract itself is uncertain as to its intent, but the parties to the contract were agreed as to its intent when they executed it, should or should not each party be morally bound to give the contract a construction in harmony with their intent when they executed it?

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"I shall omit all the earlier history pertaining to this question, every word of which gives added strength to my contention, and immediately proceed to the conditions surrounding the negotiations of the first and second Hay-Pauncefote treaties, reaching back of that only momentarily to draw from the old Clayton-Bulwer treaty of 1850 only a paragraph always referred to thereafter as the 'general principle,' and which was the only part of that old agreement retained, in any form, in the new. That 'general principle' was expressed in these words:

And the same canals or railroads being open to the citizens and subjects of the United States and Great Britain on equal terms, shall be open on like terms to the citizens and subjects of every other State—

"This is our starting point. There is the 'general principle'; and while it was reiterated a thousand times thereafter, it has never been reiterated in the sense that it has been modified.

"We start right here from this 'general principle,' which guaranteed equality of treatment to not only vessels
of the United States and Great Britain, but also to vessels of all other nations. Now, that 'general principle' was asserted and re-asserted by both parties again and again down to the adoption of the second Hay-Pauncefote treaty. Up to that time it meant equality of treatment of all vessels, including those of the United States. If it is now to have another meaning, that other meaning must be found either in an expressed declaration to that effect, or in a clear inference because of change from individual to Government ownership and control of the canal.

"At that time in the discussions in the press of our own country we took the position that the interest upon the investment and the operating expenses should be borne by all vessels passing through that canal. All our estimates for receipts in tolls to repay interest included all our vessels, coastwise and otherwise. That was what we understood on this side of the ocean.

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"In closing, I cannot but feel, and deeply feel, that this is not a mere question of dollars and cents. The matter of the payment of these tolls is a bagatelle, but we cannot measure national integrity in dollars and cents. We can throw our dollars to the winds, but we cannot throw national character to the winds. The President of the United States has taken a lofty stand in this case, and no matter whether we be Democrats or Republicans, we ought to stand by him in his effort to uphold the national integrity of this Government in the eyes of the whole world."

We will now use excerpts from the scholarly speech of Representative Stevens:
"It seems to me that the difference in the discussion between the two sides of this question is fundamental in this particular. Those of us who contend for equal tolls without discrimination as to any nation believe that the principal basis in the settlement of this question should be international, and that domestic considerations should be secondary. Those who differ with us believe that domestic considerations should be primary and that international questions should be secondary. * * * * 

"The geography of the world clearly shows its international importance. The Panama Canal is a strait connecting the two greatest oceans of the world. Upon these oceans face practically every great civilized and commercial nation of the world. Upon these oceans has been and will be carried the great mass of the waterborne commerce of the world. Upon these oceans, as we do, face nine nations, with more or less coastwise commerce between their coasts. Upon these oceans front the mother and the colonial possessions of the most important nations in the world, and upon these oceans and passing through that canal will be an increasing intercourse, which will change, more or less—probably more, as the years go on—the destiny, political, commercial and social, of all of these great peoples and countries. We must realize, then, that all of these peoples and all interests of all nations are greatly interested in the management and operation of this canal. They are interested in their own right, and they have natural, God-given rights in this great connecting waterway, which must be considered by any just people to whom may be intrusted the task of administering it."
"I speak of natural rights in connection with the use of this canal with reason and advertently, because our country from the beginning of its history has insisted on the natural rights of our people and of our commerce in the use of every connecting waterway in the world, wherever it has seemed necessary for our people or commerce to properly go. From the beginning of our Government, since the time when John Jay asserted that right on behalf of this country in the British treaty, I think of 1794, and President Jefferson sent our heroic little Navy against the Barbary pirates to assert the right of a free and open sea with equality of treatment, down through the discussion with Denmark of the right to levy sound dues at the entrance of the Baltic, the discussion of natural and international rights in the Straits of Magellan and the rights of the nations in the Pacific, north and south everywhere, every administration of every political party has insisted that American citizens and American commerce should have equal rights with every other nation everywhere and at all times. That has been the true American policy, the historic policy of our country.

"The International Parliamentary Union has collected and published a very elaborate document upon the subject of international rights in maritime canals. It contains a list of about forty great straits and connecting waterways and canals in the world, in which there are natural rights of an international character.

"In many of these the United States has asserted its right of equal treatment, and wherever any question has arisen, our Government has insisted upon its right of equal treatment for its commerce and its citizens
in every one of those waterways. The first time there has been any departure by our country from this invariable rule as to equal treatment in the use of any of this class of waterways, was the enactment of this Panama bill of two years ago.

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"There is another phase of our history that should be remembered and to which I especially wish to call the attention of my friends from New York and California. In 1846 we made a treaty with New Granada concerning communications across the Isthmus of Panama, which covered all kinds of transportation. That treaty provided that our people and our commerce should be treated on equal terms with the people and the commerce of New Granada. You will recall that was about the time of the discovery of gold fields in California. Thousands of our citizens and thousands of tons of our commerce passed over that great highway. The Governments of Panama and Colombia sought to discriminate in numberless ways against our citizens and commerce. They passed and exercised various acts of discrimination against our people. Our people bitterly complained. The records of the State Department contain hundreds of protests, hundreds of complaints, from the citizens of California and from the citizens of New York against the Governments of Panama and New Granada. Our Presidents, our Secretaries of State, our ministers, protested, sometimes effectively, sometimes in vain.

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"We protested, I say. Twice warships were sent to enforce equality of treatment, once by a Democratic
administration and once by a Republican administration, and we forced New Granada and we forced little Colombia and little Panama to yield to our citizens and to our commerce equality of treatment in the passage of that Isthmus.

"Now, that same treaty is in force. Secretary Knox officially notified the Committee on Interstate and Foreign Commerce that that same treaty is in force and effect right now. Secretary Root and Secretary Hay based their negotiations with Colombia on the fact that that treaty is in force. * * *

"We did require Colombia and New Granada to yield to us equality of treatment. While that same treaty is now in force, we propose to continue a law and adopt a policy which shall forbid equality of treatment by us to them. By the law now on the books we propose to exercise the same sort of discrimination which we sent warships and cannon to forbid them making against us. I leave it to you to decide as to the honesty and sincerity of that nation and that people who, after they know the facts, will insist upon that sort of discrimination and inconsistency. * * *

"Now, it is argued, and strongly, that because we have spent $400,000,000 in the construction of this canal and must defend and maintain it that it is ours and we ought to have the right to do with it as we please, and prefer and discriminate in favor of our own people. Consider what that argument really means. We went upon that great world highway between the oceans, knowing well the rights and interests of all nations in it. We knew and loudly claimed for many years that this was a great inter-
national highway and that we should insist upon our rights of equal treatment in its use. We said so for fifty years before we undertook its construction. When we actually undertook the construction of that highway, we entered into an engagement with the nation which owned the land over which it passed, and promised that it should continue to be a highway for equal use of all nations. We said so in pledges to the world; we said so in express terms to the nation which granted us the land for the highway. In the very instrument of grant, the treaty with Panama, by which the Canal Zone was ceded to us for use as a canal, among other things two were especially mentioned by Panama, one that her own public vessels should use the canal free from tolls, and second, that all vessels of all nations should be equally treated, and that there should be no discrimination to or for any traffic of any nation. These are express conditions of the grant by which we acquired the Canal Zone. Shall we now repudiate these pledges and these promises as to this waterway?

"Senator Davis, in his great report, well said that—

Our Government or our people will furnish the money to build the canal presents the single question whether it is profitable to do so. If the canal, as property, is worth more than its cost we are not called on to divide the profits with other nations. If it is worth less and we are compelled by national necessities to build the canal, we have no right to call on other nations to make up the loss to us. In any view it is a venture that we will enter upon if it is to our interest, and if it is otherwise we will withdraw from its further considerations.

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"When we commenced that great undertaking we knew what we were about to do. We went into it with our eyes wide open, and told the world, and especially our
neighbors, of our intention; and now that it is finished, do the American people mean to say that because we want it, because we are big and it is big, we will do as we please regardless of the promises in the past?

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"Article II provides three methods for constructing the canal: First, by the United States itself, at its own cost; second, by individuals or corporations whom the United States might assist by loan or gift of money; third, by individuals or corporations with whom the United States may co-operate through subscription to or purchase of stock or shares. Article II is as follows:

Article II. It is agreed that the canal may be constructed under the auspices of the Government of the United States, either directly at its own cost or by gift or loan of money to individuals or corporations or through subscription to or purchase of stock or shares, and that, subject to the provisions of the present treaty, the said Government shall have and enjoy all the rights incident to such construction, as well as the exclusive right of providing for the regulation and management of the canal.

"Necessarily the rules as to the use of the canal prescribed in Section 1, Article III, as to equality, must apply in the same way to all of these methods of construction and to whichever one of them may be adopted. There is nothing in the treaty indicating any different treatment of American vessels, whether the canal be constructed by private corporations or by the Government itself. This being true, with no provision in the treaty granting any preferential right or privilege, but, on the contrary, the strongest kind of language forbidding it, it must be difficult for any impartial person to fairly contend that a corporation constructing the canal at its
own expense and operating it for a profit, as the Suez Canal was constructed and is operated, can, under these circumstances and conditions, be compelled to give free passage to a large class of vessels possibly yielding a larger profit to their owners, owned by other corporations or interests not named, described, or excepted anywhere in the treaty.

“It is submitted that under this treaty any corporation constructing and operating the canal under this provision would not be compelled to relinquish, without consideration, any of its legitimate revenues to another corporation owning and operating American ships in the coastwise trade.

“Exactly the same rule must apply to the construction and operation by the United States itself as by a private corporation doing the same thing, because the same language and the same authority and rules apply to both. There can be no exception in one case unless it can also be an exception in the other.

“It can hardly be argued that the United States might exact as a condition of any grant, aid, or subscription that there should be a preference or discrimination to the vessels of commerce of its citizens, because that very thing is expressly forbidden by the broad terms of Section 1, Article III, prohibiting any such exception or condition.

“Any other stockholder or guarantor could have as much right to exact his own private conditions for his own private advantage, with the result that the enterprise would face ruin from the start. The treaty gives the United States as a stockholder or guarantor no other
rights than any other interest also assisting in the enterprise. A British, German, French or Japanese steamship company might subscribe, own and hold large blocks of stock or bonds in a corporation provided in section 2, and with equal right under the treaty might demand a preference for its vessels as an exception on account of such ownership. Of course such a demand would be absurd and unjust, and yet equally valid and equitable as a similar demand and exception for the United States. The terms of the treaty and the existing situation would seem to practically and legally make the United States a corporation sole, for the purpose of constructing, operating, and managing the canal, with exactly the same rights, obligations and responsibilities which would pertain to any other corporation provided for by the treaty, doing exactly the same thing under the treaty. But as an incident to ownership, the vessels of the owner, used for its own purposes in connection with the project, could undoubtedly be passed. A corporation could pass its vessels used for canal purposes. Equally the United States as a sovereign passes its public vessels used for its own purposes. That is what this section means. But its qualifying phrases clearly exclude the vessels and commerce of all else than of the owner, the sovereign in the case of the United States. The article clearly grants rights to the vessels belonging to the sovereign and as clearly puts vessels belonging to the citizens of that sovereign on the same terms as vessels of the citizens of all nations.

"One of the principal arguments that the United States is not included within the terms 'of all nations observing these rules,' is that because the United States
is required to make and promulgate the rules, the treaty should not be construed as holding that the nation which makes the rules should be included within or bound by the rules to be promulgated by itself. This is clearly fallacious, because Article II provides that 'subject to the provisions of the treaty' the United States shall have the rights incident to such construction, and so forth. That, of course, applies the remaining portion of the treaty to the rights of ownership. The remaining portions of the treaty are Articles III and IV containing the rules framed upon the rules governing the Suez Canal. These rules at Suez and the similar ones at Panama embrace all vessels of commerce of all nations. An inspection of the rules themselves clearly shows that they do apply and were intended to apply to the United States.

"It must be admitted that the last sentence of Section 1, Article III, applies to the United States, 'such conditions and charges of traffic shall be just and equitable.' If not, then this nation can make unjust rules which would practically make the canal useless to the other nations. Again, the last sentence of Section 2 applies in terms 'the United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder.' It is difficult to argue that such language does not apply to the United States. Section 5 provides that the provisions 'of this section shall apply to waterways adjacent to the canal within three marine miles of either end.' This was inserted because both Great Britain and the United States at various times had insisted that the three-mile limit might be extended under
certain conditions. It was agreed here clearly that the three-mile limit shall apply as one of the rules binding the United States in its treatment of the canal, except in time of war. Section 6 binds the United States itself in the time of war and peace to maintain the integrity of the canal plant. This is the main purpose of this section. So any reasonable examination of these rules clearly shows that they do apply to and bind the United States and were so intended when framed. One other thought in this connection: The preamble applies the general principle of neutralization to these rules, as set forth in Article VIII of the Clayton-Bulwer treaty. This principle is for equality and equity of treatment of all—the essence of these rules. The preamble binds the whole treaty, and so the United States. Of course, as it has been heretofore stated, that in the time of war the treaty ceases to operate and the United States may adopt any means necessary for its defense and temporarily close the canal.

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"In the construction of the controverted clauses of any document it is always of prime importance to know exactly what the persons themselves intended by the language which is subject to dispute; and when they have set forth their own ideas as to its intention and meaning and have given good reasons for it, usually such facts have been conclusive as to the construction whenever the language has fairly allowed.

"The negotiations for the modification of the Clayton-Bulwer treaty and for the framing of the Hay-Pauncefote treaty were commenced by Secretary of State John Hay by a letter, December 7, 1898, to Hon. Henry White,
charged at London, and the reply of Mr. White, of date December 22, 1898. * * *

"From these and other letters it appears in at least three different places that the first and necessary condition of a treaty must be that all vessels of all nations must receive in the use of the canal the same terms and treatment as American vessels. This condition was emphasized more than any other one provision, and descriptive references were forwarded to make it clear that such clause must include all vessels of all classes, foreign and coastwise, so there could be no mistake about the meaning of any language in the treaty.

"Secretary Hay and our Government readily agreed to such condition, and nobody objected to it, because it has always been the consistent, continuous and historic policy of our Government for more than fifty years to do that identical thing.

* * *

"So Secretary Hay, with the approval of President McKinley and the proper officials of the United States, prepared the Hay-Pauncefote treaty and submitted it to Great Britain. In it were placed the clauses, heretofore referred to, maintaining the general principle of 'equality and neutrality,' and expressly setting forth in as clear and explicit language as possible 'that the vessels of commerce and war of all nations should be treated on terms of entire equality, so that there shall be no discrimination against any nation, its citizens or subjects, in respect of the conditions or charges of traffic or otherwise.' Not a hint of any exception for our commerce, or any other exception; but on the contrary, the correspondence showed that all
officials intended clearly and beyond question that 'all vessels, commerce and citizens must be treated exactly alike.'

"Surely this preliminary history, these negotiations, the language itself, the preamble and then the proclamation, in terms following and adopting the language, should be sufficient to show that no ambiguity or implication of any other meaning could possibly exist. In ordinary cases it would be sufficient, and no further question could be raised. But one additional fact still further re-enforces this history and construction.

"At that time the ambassador of the United States to Great Britain was the Hon. Joseph H. Choate. He was absent at the time the negotiations were commenced, but returned, and, of course, became intimately acquainted with the proceedings as to both treaties. In a recent address he has stated emphatically his own recollections and understanding of the occurrences at that time.

* * *

It is true that I had something to do with the negotiation of this treaty. In the summer of 1901—you will remember that this treaty was ratified by the Senate in November, 1901—I was in England until October and was in almost daily contact with Lord Pauncefote, who on his side represented Lord Lansdowne, the foreign secretary, and was also in very frequent correspondence with Mr. Hay, our Secretary of State, under whom I was acting. As the lips of both of these diplomatists and great patriots, who were each true to his own country and each regardful of the rights of the other, are sealed in death, I think it is quite proper that I should say what I believe both of them, if they were here, would say today—that the clause in the Panama Canal bill exempting coastwise American shipping from the payment of tolls is in direct violation of the treaty.

I venture to say now that in the whole course of the negotiation of this particular treaty no claim, no suggestion, was made
that there should be any exemption of anybody. How could there be in face of the words they agreed upon? Lord Pauncefote and John Hay were singularly honest and truthful men. They knew the meaning of the English language, and when they agreed upon the language of the treaty they carried out the fundamental principle of their whole diplomacy, so far as I know anything about it, and in the six years I was engaged with them their cardinal rule was to mean what they said and to say what they meant.

"Only a few weeks ago Hon. Henry White delivered an address in Washington, in which he clearly and strongly affirmed the terms stated in the original note and correspondence, that the intention always existed on the part of all the officials of both Governments that vessels of commerce of both and all nations should always be treated on terms of entire equality. This would include all trade—foreign and coastwise. Mr. White has a more intimate knowledge of the actual transactions than any living man, and his statement should be conclusive with fair and just men."

Senator Root's speeches of January 21, 1913, and May 21, 1914, are equal to the best forensic efforts in the United States Senate. In the excerpts therefrom which follow, the Senator advances a new argument for tolls-exemption repeal which is sui generis.

**ARTICLE III**

The United States adopts, as the basis of the neutralization of such ship canal, the following rules, substantially as embodied in the convention of Constantinople, signed the twenty-eighth of October, 1888, for the free navigation of the Suez Canal; that is to say:

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

* * *

"What is the 'entire equality' contemplated by Rule 1 of Article III of this treaty? Is it entire so that it assures equality in comparison with all ships engaged in the same trade similarly situated, the same kind of trade, or is it partial, so as to be equality in comparison only with certain ships engaged in the same kind of trade and not applying to other ships engaged in the same kind of trade, to wit, not applying to ships which are owned by American citizens?

* * *

"Is the kind of equality that is assured such that there will be no discrimination or that there will be no discrimination except against the ships of other nations and in favor of ships belonging to American citizens?

"Now, let us examine the question in the light of the circumstances which surrounded the making of this treaty and the conditions under which it was made. Treaties cannot be usefully interpreted with the microscope and the dissecting knife as if they were criminal indictments. Treaties are steps in the life and development of great nations. Public policies enter into them; public policies certified by public documents and authentic expressions of public officers. Long contests between the representatives of nations enter into the choice and arrangement of the words of a treaty. If you would be sure of what a treaty means, if there be any doubt, if there are two interpretations suggested, learn out of what conflicting public
policies the words of the treaty had their birth; what arguments were made for one side or the other, what concessions were yielded in the making of a treaty. Always, with rare exceptions, the birth and development of every important clause may be traced by the authentic records of the negotiators and of the countries which are reconciling their differences. So it is the universal rule in all diplomatic correspondence regarding international rights, in all courts of arbitration, that far more weight is given to records of negotiations, to the expressions of the negotiators, to the history of the provisions than is customary in regard to private contracts or criminal indictments.

"This question as to the kind of equality that the makers of this treaty intended to give divides itself very clearly and distinctly into a question between two perfectly well-known expedients of treaty making; one is the favored-nation provision, with which we are all very familiar in commercial treaties, and the other is the provision according to citizens of another country rights measured by the rights of the nationals or citizens of the contracting country. The most-favored-nation provision has its most common expression in the provision regarding tariff duties, a provision that no higher duties shall be charged upon goods imported from one foreign country than upon goods imported from other foreign countries. That is the common 'most-favored-nation clause.'

* * *

"A careful examination shows this to be a fact: That it is the universal rule, with rare exceptions, that wherever the rights of the citizens of a contracting country can be made the standard of equality for the citizens of another
country they are made so, and that recourse is not had to the most-favored-nation clause, except where that higher degree of equality is impossible because the citizens of the two countries occupy different relations to the business that is contemplated.

“So we have the question between these two kinds of equality clearly drawn and resting upon long experience of nations, a subject fully understood by the negotiators of this treaty upon both sides.

“We know now that the negotiators of this treaty, the men who made it, all understood that the larger equality was intended by its terms. Of course, what the negotiator of a treaty says cannot be effective to overthrow a treaty; but I think we must all start, in considering this question, with the assumption that the words are capable of two constructions. I think no one can deny that, in view of the differences of opinion which have been expressed here regarding their meaning. So here are words capable of two constructions, a broad construction and a narrow construction, but the fact that all the makers of the treaty intended that the words they used should have the larger effect is certainly very persuasive toward the conclusion that those words should receive the larger effect. Not only the American negotiators but the British negotiators as well so understood it. Whenever we seek to impose upon these words a narrower construction for our own interests than the makers of the treaty understood them to have, we should remember the fundamental rule of morals that a promiser is bound to keep a promise in the sense in which he had reason to believe the promisee understood it was made. * * *
"The kind of equality which the negotiators intended—that is, an equality in which the treatment of American citizens is made the standard for the treatment of foreign citizens—had during all the history of the Isthmian Canal efforts been the standard sought for in negotiations and treaties. That kind of equality was the standard adopted by the public policy of the United States for all similar enterprises. It was customary; it was uniform; it was natural for negotiators of a treaty relating to a canal. Let me illustrate that by referring to the initial treaty on this subject, the treaty of New Granada of 1846. When the American negotiators making that treaty dealt with the subject of a railroad and canal, what kind of equality did they stipulate for? Why, this:

The Government of New Granada guarantees to the Government of the United States that the right of way or transit across the Isthmus of Panama upon any modes of communication that now exist, or that may be hereafter constructed, shall be open and free to the Government and citizens of the United States, and for the transportation of any articles of produce, manufactures or merchandise of lawful commerce belonging to the citizens of the United States; that no other tolls or charges shall be levied or collected upon the citizens of the United States of their said merchandise thus passing over any road or canal that may be made by the Government of New Granada or by the authority of the same than is, under like circumstances, levied upon and collected from the Granadian citizens.

"The message of President Polk transmitting this New Granada treaty of 1846 to Congress dwells especially upon the assurance to citizens of the United States of equal charges and equal facilities in the use of railroad and canal with citizens of New Granada.

"I go back again to the Clayton-Bulwer treaty of
1850. There is no doubt about the kind of equality which the negotiators considered it to be valuable to get, useful to get, natural to get.

* * *

"Article VIII provides that—

It is always understood by the United States and Great Britain that the parties constructing or owning the canal 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.

"You will perceive, sir, that the terms on which citizens of other countries were to be allowed to come in were not terms of the most-favored nations as among themselves. They were on like terms with those which existed between Great Britain and the United States; that is to say, each other country which came in and adhered to this Clayton-Bulwer treaty was to have the rights of its citizens measured by the rights accorded to the citizens of the United States and to the citizens of Great Britain.

* * *

"We are asked to believe that starting with the Clayton-Bulwer convention, which gave to Great Britain unquestioned assurance of the larger and more valuable equality of her vessels with the vessels of American citizens, in a negotiation with a country which in all its history had insisted regarding all canals that the measure of equality should be the measure of service and of charges to its national citizens, abandoned the vantage ground of the Clayton-Bulwer treaty and gave up that basis of equality without one word in the negotiation, without
discussion, without its being asked, without its being mentioned without its knowing it, without the other, negotiators knowing it. But that is not all.

"It was not merely the immemorial policy of the United States and Great Britain regarding all canals; it was not merely the general public policy of the United States and Great Britain regarding all ports and waters, but it was the policy of the United States regarding trade the world over, and the champion and protagonist of that policy was John Hay. At the very time that he was negotiating the Hay-Pauncefote treaty he was appealing to the justice of all the nations of the world for the 'open door' in China; he was appealing to them in the interest of the world's commerce, in the interest of civilization to accord in all their possessions in China, what? Favored-nation treatment? Oh, no; the same treatment that they accorded to their own citizens. Let me ask you to attend for a moment to things that John Hay wrote regarding this great design, the accomplishment of which will ever stand in the history of diplomacy as one of the proudest contributions of America to the progress of civilization. On September 6, 1899, he wrote to Mr. Choate in London:

The Government of Her Britannic Majesty has declared that its policy and its very traditions precluded it from using any privileges which might be granted it in China as a weapon for excluding commercial rivals, and that freedom of trade for Great Britain in that Empire meant freedom of trade for all the world alike. While conceding by formal agreements, first with Germany and then with Russia, the possession of "spheres of influence or interest" in China, in which they are to enjoy special rights and privileges, more especially in respect of railroads and mining enterprises. Her Britannic Majesty's Government has therefore sought to maintain at the same time what is called
the "open-door policy" to insure to the commerce of the world in China equality of treatment within said "spheres" for commerce and navigation.

*   *   *

"So he wrote all of the great nations of the world an appeal for equal treatment, an appeal for a specific stipulation to secure the equal treatment that no higher charges should be imposed upon the citizens of any other country in the ports and waters possessed by those great powers in China or for freight or passage over the railroads built and controlled by them than were imposed upon their own citizens. To that appeal all the great powers of the world responded in affirmance; and on the twentieth of March, 1900, Mr. Hay was able to issue his circular of instructions to all the ambassadors and ministers of the United States announcing the universal assent of the world to that great principle of equality—equality measured by the rights of the citizens of the nation granting it in all the Empire of China; yet we are asked to believe that John Hay denied, abjured, repudiated that policy of civilization in regard to the Panama Canal at the very moment that, through the same agents, he was enforcing the policy upon the same countries; and that he did it without knowing it.

"But, we are not left to inferences which must be drawn from the circumstances that I have mentioned or from declarations of public policy or from the uniform course and custom of treaty making regarding canals and regarding public waters and transportation. There is positive, and it appears to me conclusive, affirmative evidence that the negotiators did effectively proceed
in making this treaty in accordance with the honorable obligation of their country as the builder and maintainer of a public utility, as the champion of equal commercial rights the world over.

"We begin the consideration of the express provisions leading to the conclusion that the larger equality was intended with the communication of the Hay-Pauncefote treaty to the Senate. Of course, we are all familiar with the terms of the preamble preserving the general principle of Article VIII of the Clayton-Bulwer treaty. Let me read them again, however, for convenience of reference:

The United States of America and His Majesty Edward the Seventh, of the United Kingdom of Great Britain and Ireland, and of the British dominions beyond the seas, King, and Emperor of India, 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. * * *

"Now we are told that the language of a treaty or of a contract or of a statute cannot be changed by the preamble; but what is the purpose of a preamble? The purpose is to afford a guide to the interpretation of the terms of the treaty or of the statute. When you start with the third article of the Hay-Pauncefote treaty and have a debate as to its interpretation, you turn to the preamble and you find there a guide intended by the makers of the treaty to enable you to reach the right interpretation upon the terms of the third article. But,
still further than that, the idea of not impairing the
general principle of neutralization is carrried into the
treaty itself, for in Article IV—

It is agreed that no change of territorial sovereignty or of
international relations of the country or countries traversed by
the before-mentioned canal shall affect the general principle of
neutralization or the obligation of the high contracting parties
under the present treaty.

"That is, repeating in the fourth article as being a
part of the treaty itself, the words of the preamble that
the obstacles of the Clayton-Bulwer treaty are to be
removed without impairing the general principle of neu-
tralization established in Article VIII of that convention.

"This preamble, sir, which refers to the general
principle of neutralization in the Clayton-Bulwer treaty
and which manifestly is designed to preserve in the Hay-
Pauncefote treaty something of the Clayton-Bulwer
treaty, has been treated in discussion as being a matter
of not very much importance. Not so the view of the
negotiators of the treaty. Not so the view of anybody
connected with our Government at the time the treaty
was made, for you will perceive, in the first place, that
in the letters of transmittal of the treaty special pains
are taken to have it understood that this treaty preserves
unimpaired something which is called the general principle
of neutralization.

"Mr. Hay, in transmitting the Hay-Pauncefote treaty
to the President, writes:

I submit for your consideration * * * a convention
* * * to remove any objection which may arise out of
the * * * Clayton-Bulwer treaty * * * without im-
pairing the "general principle" of neutralization established
in Article VIII of that convention.
"President Roosevelt, in transmitting the treaty to the Senate, says:

I transmit, for the advice and consent of the Senate to its ratification, a convention signed November 18, 1901, to remove any objection which may arise out of the convention of April 19, 1850, 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.

"That feature of the Hay-Pauncefote treaty is dwelt upon and made extraordinarily prominent, and there is a manifest feeling that the Senate ought not to lose sight of it in considering whether it shall advise the ratification of the treaty.

* * *

"The only two things in Article VIII are the equality of service and of charge between the vessels of the United States and those of Great Britain and the extension of that to other countries that come in and the obligation of protection. The great object of the negotiation of the Hay-Pauncefote treaty was to take over to the United States alone the duty and the right of protection. That was the difference between the Hay-Pauncefote treaty and the Clayton-Bulwer treaty—that Great Britain was to surrender the right of protection, to be relieved from the duty of protection, and no other countries were to be permitted to come in and exercise the right of protection. The United States was to put itself on the platform that Blaine laid down in 1881 as the sole protector of the canal. What, then, was there to be preserved unimpaired in the eighth article of the Clayton-Bulwer treaty? Nothing except the basis of equality, equality between the United States and Great Britain, equality measured by the
treatment of the nationals of one country for the nationals of the other. Nothing else was left to be preserved unimpaired.

*   *   *

"Mr. Hay, in his letter to Senator Cullom at the time the treaty was under consideration by the Senate, says:

He (the President) not only was willing but earnestly desired that the "general principle" of neutralization referred to in the preamble of this treaty and in the eighth article of the Clayton-Bulwer treaty should be perpetually applied to this canal. This, in fact, had always been insisted upon by the United States.

"There was no change in policy.

He recognized the entire justice and propriety of the demand of Great Britain that if she was asked to surrender the material interest secured by the first article of that treaty, which might result at some indefinite future time in a change of sovereignty in the territory traversed by the canal, the "general principle" of neutralization as applied to the canal should be absolutely secured.

"Whatever else the Hay-Pauncefote treaty means, it means to secure absolutely the general principle of neutralization contained in the eighth article of the Clayton-Bulwer treaty, which was, according to the understanding of the makers of the Hay-Pauncefote treaty, the absolute equality of the ships, the citizens and the subjects of all nations with the ships and the citizens of the United States and of Great Britain; and we are not at liberty to spell out any different meaning of the Hay-Pauncefote treaty.

*   *   *

"The third article of the Hay-Pauncefote treaty provides:

The United States adopts, as the basis of the neutralization of such ship canal, the following rules, substantially as embodied
in the convention of Constantinople, signed the twenty-eighth of October, 1888, for the free navigation of the Suez Canal.

"Article XII of the Suez Canal convention provides that dues are to be levied without exception or favor upon all vessels under like conditions.

"That was a fundamental basis under which the Suez Canal was to be operated. The convention proceeds:

The Suez Maritime Canal shall always be free and open, in time of war as in time of peace, to every vessel of commerce or of war, without distinction of flag.

* * *

"This convention which makes that declaration of absolute and universal equality of tolls a basis of its agreement was made after Great Britain had become the chief owner and arbiter of the canal. Now, I come back to the Hay-Pauncefote treaty. Article III:

The United States adopts as the basis of the neutralization of such ship canal the following rules, substantially as embodied in the convention of Constantinople, etc.:

1. The canal shall be free and open to the vessels of commerce and of war of all nations observing the rules on terms of entire equality.

"An 'entire equality' substantially as embodied in the Suez convention. You are bound to say that the equality was substantially the same. When these negotiators at that very instant were appealing to the Suez convention and declaring the treaty they were making was substantially the same in the rule of equality which it prescribed, when they were declaring that what they were doing was substantially like what the Suez convention did—you are not at liberty to say that at that very instant they meant something entirely different. If you do, that, you say
they were dishonest, they were disingenuous, they were deceiving Great Britain.

"Ah, the worst thing about it is that our Government has said from generation to generation it was going to treat all the world alike in whatever it did about this canal; that the makers of our treaty declared that they were preserving unimpaired the equality established in the eighth article of the Clayton-Bulwer treaty; that the makers of our treaty declared that the provision for equality was substantially the same as that in the Suez treaty; that that was the uniform, the unvarying attitude of the United States in every step which we took to acquire title to the Canal Zone and to get the unrestricted right to own and operate the canal; and not until after we got it, not until after we were secure, did any American ever broach the idea that we were to use the canal for selfish advantage commercially; that to the political control, to the military control, to the power of ownership and regulation and management we were to add a discrimination against all the rest of the world for the purpose of enabling our merchant ships to outdo them in competition."

We will now use excerpts from an able speech by Senator Burton:

"OUR DEMANDS IN RELATION TO CANADIAN WATERWAYS IN 1888 TO 1892.

* * *

"The Canadian Government in council had in substance decreed that while the tolls on cargoes carried through the Welland Canal should be twenty cents per ton on eastbound freight, yet if the boat went as far as
Montreal there should be a rebate of eighteen cents a ton, leaving the net toll only two cents. This gave a preference to the port of Montreal as compared with the ports of the United States on Lake Ontario, the St. Lawrence River, and, in fact, upon the north Atlantic seaboard. Its manifest object was to increase the importance of Montreal as a port for the export of grain and other commodities.

* * *

"A resolution by unanimous vote of Congress authorized the President to issue a proclamation in retaliation; also the proclamation in retaliation of August 18, 1892. This action led to a revocation of the regulation of the Canadian Government by order of the council, so that equal privileges were afforded to the ships and commerce of both nations.

"The distinct assertion by all of our statesmen who took part in this controversy or declared themselves upon the subject was that by the treaty of 1871 equality of treatment was secured not only for our shipping, but for our citizens, that regard must be had for the routes of transportation to prevent discrimination against the United States in trade. But it should be very carefully noted that the treaty of 1871 did not contain so strong language as the Hay-Pauncefote of 1901. Indeed, it is not only plausible but extremely probable that the language of the treaty of 1871 was in mind when that of 1901 was drawn, and that the object was to secure equality beyond the possibility of any ambiguity. The language of the treaty of 1871 is:

The Government of Her Britannic Majesty engage 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.

"The language of the Hay-Pauncefote treaty is:

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

"There is no question of territory involved in Canadian canals, either the Welland or those below Lake Ontario beside the rapids along the St. Lawrence River. They are all within the Dominion of Canada. It was not necessary to acquire the land through which they pass to build a canal as 'a trust for the world.' The argument in favor of the right of exclusion is, we must admit, much stronger than it is in the case of the Panama Canal; yet when a discrimination in tolls, which it was alleged was not altogether against our ships, was attempted, we demanded that it should be done away with, because it discriminated against our citizens and diverted trade and transportation which naturally belonged to our own country in another direction. Can we afford to assert the principle of equality in the use of channels when it benefits us and our trade, and at the same time establish another and entirely opposite rule when the canal or route belongs to us?

*   *   *

"The slight attention given in these debates to our demand from 1888 to 1892 for equal privileges in the Welland Canal and other Canadian channels is hardly
fair to those who advocate the repeal of this exemption. During the debates in July and August of 1912 the demand was made that the supporters of the House bill should reconcile their position with the attitude of the United States on this question during the administrations of President Cleveland and President Harrison. I do not recall that any reply was made to that challenge of 1912 for a consistent explanation of our course in 1888 to 1892. But now, after the lapse of two years, the explanation is offered that neither Canada, nor Great Britain acting for her, ever conceded that they were wrong; but that to the last they maintained the correctness of their position and yielded merely as a matter of expediency. But does even that afford one particle of justification for us to insist upon this preference?

"We made an insistent demand, not merely by diplomatic notes, but by action of Congress and by a retaliatory proclamation expressing our interpretation of the principles involved in the treaty relating to the Welland Canal and asserting the observance of our traditional policy. The action taken then was in entire harmony with declarations theretofore made in regard to the proposed Isthmian Canal, and our demands in regard to other waterways in foreign countries extending over one hundred years. It must be conceded that the position taken by the act of 1912 was squarely in contradiction to that of 1892.

"Can we now, under changed conditions, and when we will be benefited by observing a different rule, afford to declare that our deliberate action then taken was wrong? Was there one law of honor and patriotism in 1892 and
another in 1912? Does it require only twenty years to change the law of fairness between nations?

"* * * It has been maintained in this discussion that the Panama route is a national waterway, as it is located upon territory owned by the United States, and thus within its sole jurisdiction. Indeed, the very extreme statement has been made that we could not respect the suggestion of another Government to make all tolls equal, because it would involve an abandonment of sovereignty. * * *

"A strip ten miles in width was granted for its construction, but this was not a territorial acquisition. If so, it would have been absolutely contrary to our settled policy with reference to the republics to the south of us. For this strip we pay an annual rental of $250,000, which is quite inconsistent with a fee-simple title. A width of ten miles was regarded as necessary for the convenient construction and operation of the canal. Material was obtained from this area or zone in the work that was done. Also material was deposited upon it. Provision was made in the treaty for going outside the zone on payment of proper compensation, if necessary for the construction of the canal. It was deemed desirable that the land obtained be permanently held for the habitation of those engaged in the operation of the canal and for sanitary and police control in its immediate locality. Had the mere ground through which the canal is excavated been obtained, it would have been easy for marauders to approach it, and the safeguarding of the health of the employees would have been difficult. The language of the treaty itself expresses in the clearest terms that the
grant of land in Panama is in trust for a certain purpose and not for territory to be incorporated in the United States as a part of its general domain.

"As compared with other portions of the United States the distinctions in the control exercised over this strip are very marked. There is no legislative body. There is no provision for elections. A governor is appointed by the President. In the express language of the statute, the Canal Zone 'is to be held, treated, and governed as an adjunct of such Panama Canal.' The customs laws of the United States are not applicable there, nor have the inhabitants of this strip the right to send their merchandise into the United States in the manner granted to the people of our country. Imports from the Canal Zone pay duties at our customhouses in the same manner as imports from a foreign country. Imports into the Canal Zone are not subject to the duties imposed by our laws. The War Department has assumed the authority of fixing customs regulations without any reference to Congress whatever. The canal, instead of being an artery of commerce, supplying a large adjacent territory, such as is the case with the great rivers or waterways of the United States, is limited to furnishing what is needed for those who operate the canal and to the promotion of its traffic. Whatever trans-shipment there may be, whatever coaling or supply stations may be established, are but incident to the waterway between the oceans, and are provided to facilitate traffic through the canal. The most important of all, however, is the fact that this waterway is a mere connecting link between the two oceans, less than fifty miles in length, and is constructed
as a part of maritime routes of great length providing a waterway to aid the means of communication between nations, many of which are remote from the canal and are located upon seas or oceans.

“Second. It has been maintained that there is a marked distinction between natural and artificial waterways in the degree of control which may be exercised over them by the countries through which they pass.

“The more recent declarations of publicists and international lawyers, however, all favor the idea that artificial canals connecting great bodies of waters are international waterways. This principle was asserted in the most unequivocal language in the convention relating to the Suez Canal of 1888. The duty of a country owning the territory through which a canal may be constructed to afford opportunity for its construction was maintained in the most strenuous manner by President Roosevelt in his action with reference to Colombia.

“There is no clearer statement of the American view on the subject than that contained in a letter from the Hon. Lewis Cass, our Secretary of State under President Buchanan, to Mr. Lamar, our minister to the Central American States, on July 25, 1858. He wrote, in referring to the country or countries through which a canal might be constructed, the following:

* * * Sovereignty has its duties as well as its rights, and none of these local governments would be permitted, in a spirit of eastern isolation, to close these gates of intercourse on the great highways of the world and justify the act by the pretension that these avenues of trade and travel belong to them, and that they choose to shut them or, what is almost equivalent, to encumber them with such unjust regulations as would prevent their general use.
"We can reach no conclusion except that a canal constructed like the Panama, under a concession, the aim and object of which is merely to provide a connecting waterway, especially in view of the language of the Hay-Pauncefote treaty, is to be considered as an international watercourse and subject to the rules pertaining to natural straits. There is, of course an exception to this, so far as regards the necessity of adopting necessary regulations to protect against hostile attack, the necessity of adopting proper regulations to insure the safety of boats in passing, to provide against injury to locks and other constructions, to police the canal and enforce sanitary regulations. Again, the position of an artificial waterway is exceptional in that the cost of construction allows the imposition of tolls as a compensation for the expense of the improvement, though in many instances the improvement of natural channels so as to make them readily available for navigation is very large, and, in kind, the same as the building of artificial waterways. Indeed, it is often a question over a given stretch of a river whether the most feasible method to secure navigation is by improving the main stream or by a lateral canal. In modern times the demand is that navigation have free scope, without interruption from pirates, from payment of tribute, or from discrimination. As has been pointed out, there is no nation which has been quite so insistent in this principle as our own. The tendency of recent years in the making of treaties and agreements is altogether against discrimination in the use of artificial waterways. It should again be said that our own policy, as exemplified in negotiations with Canada, shows that we have maintained
the principle that when a canal is a connecting link in a longer route afforded by rivers or by sea, it must be open on equal terms to all. Every declaration made upon this subject in the earlier years when negotiations were under way for an Isthmian canal would condemn in the most decisive language any attempt on our part to discriminate in our favor in any canal connecting the two oceans.

* * *

"The treaties pertaining to a proposed Isthmian canal are especially significant. In that of 1846 with New Granada there are two provisions. Article III contains the usual clause exempting the coastwise trade of either country. Article XXXV, which has to do with the ports of the Isthmus of Panama or any road or canal across the Isthmus that may be made by the Government of New Granada, or by the authority of the same, provides that there shall be no other tolls or charges levied or collected from the citizens of the United States than are, under like circumstances, levied and collected from the Granadan citizens.

"The Cass treaty of November 26, 1857, with Nicaragua, known as the Cass-Yrisarri treaty, in Article II reserves the coastwise trade; Article XIV grants transit on terms of equality to the Atlantic and Pacific, and contains the provision that no higher charges or tolls shall be imposed on the conveyance or transit of persons or property of citizens or subjects of the United States or any other country across said route of communication than are or may be imposed on the persons or property of citizens of Nicaragua. This treaty was not ratified."
Other treaties with Nicaragua and other countries make unequivocal reference to the coastwise trade.

"In the treaty with Panama of 1903 there is in Article XIX an exemption of the vessels of the Republic of Panama and its troops and munitions of war in such vessels from the payment of charges of any kind. This shows that when an exemption was intended it was regarded as necessary to state it. The Frelinghuysen-Zavala treaty, made in 1884 and recommended by President Arthur in his message of the same year, but withdrawn by President Cleveland in his first annual message of 1885, contained this provision in Article XIV:

The tolls hereinbefore provided shall be equal as to vessels of the parties hereto and of all nations, except that vessels entirely owned and commanded by citizens of either one of the parties to this convention and engaged in its coasting may be favored.

"Thus all of these treaties—that with New Granada, the proposed agreements with Nicaragua, and the treaty with Panama—show that in all our negotiations pertaining to an Isthmian canal when it was intended to exempt coastwise shipping or to grant any preferences it was specifically so stated.

"Now, the Hay-Pauncefote treaty of 1901 contained no exemption of coastwise shipping, but, on the contrary, the very strongest language to express entire equality.

"Is it to be believed that when, through a series of years in practically all countries near to the proposed canal, coastwise shipping was exempt from the provisions of the treaties in the most definite language it could have been intended to claim exemption or preference for our own coastwise shipping in this canal, built on soil acquired
from a foreign country and connecting the two great oceans of the world, without any language whatever on the subject? If it was intended to exempt our coastwise shipping, why did we not say so? This, too, in the face of our own *traditional policy* asserted against Canada less than ten years before, and asserted contemporaneously, at least in principle, in negotiations with the nations having spheres of influence in the Chinese Empire.

* * *

"In opposing this bill for repeal nothing has been more frequent than an appeal to patriotism and to national pride. Any such appeal must necessarily be received with a responsive spirit, and if made with earnestness it stirs the heart. But patriotism does not mean that we shall disregard treaty obligations or swerve from policies which have been maintained with persistency and zeal through all our national life. It is our duty to maintain a scrupulous regard for national faith and to follow the rules which we have laid down for ourselves as well as for all other nations. To be consistent and to be fair to all the world, that is patriotism. If we retrace our steps from the ennobling record which has characterized us for more than one hundred years, let us beware lest the most inspiring notes of patriotism, though uttered with the tongues of men and of angels, may become as sounding brass and a tinkling cymbal."

**SENATOR ROOT ON THE SOVEREIGNTY OF THE CANAL ZONE**

"Well, asserting that we were acting for the common benefit of mankind, willing to accept no preferential right
of our own, just as we asserted it to secure the Clayton-Bulwer treaty, just as we asserted it to secure the Hay-Pauncefote treaty, when we had recognized the Republic of Panama, we made a treaty with her on the eighteenth of November, 1903. I ask your attention now to the provisions of that treaty. In that treaty both Panama and the United States recognize the fact that the United States was acting, not for its own special and selfish interest, but in the interest of mankind.

"The suggestion has been made that we are relieved from the obligations of our treaties with Great Britain because the Canal Zone is our territory. It is said that, because it has become ours, we are entitled to build the canal on our own territory and do what we please with it. Nothing can be further from the fact. It is not our territory, except in trust. Article II of the treaty with Panama provides:

The Republic of Panama grants to the United States in perpetuity the use, occupation and control of a zone of land and land under water for the construction, maintenance, operation, sanitation and protection of said canal—

"And for no other purpose—

of the width of ten miles extending to the distance of five miles on each side of the center line of the route of the canal to be constructed.

*   *   *

The Republic of Panama further grants to the United States in perpetuity the use, occupation and control of any other lands and waters outside of the zone above described which may be necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said canal or of any auxiliary canals or other works necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said enterprise.
"Article III provides:

The Republic of Panama grants to the United States all the rights, power and authority within the zone mentioned and described in Article II of this agreement—

"From which I have just read—

and within the limits of all auxiliary lands and waters mentioned and described in said Article II which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority.

"Article V provides:

The Republic of Panama grants to the United States in perpetuity a monopoly, for the construction, maintenance and operation of any system of communication by means of canal or railroad across its territory between the Caribbean Sea and the Pacific Ocean.

"I now read from Article XVIII:

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, the treaty entered into by the Governments of the United States and Great Britain on November 18, 1901.

"So, far from our being relieved of the obligations of the treaty with Great Britain by reason of the title that we have obtained to the Canal Zone, we have taken that title impressed with a solemn trust. We have taken it for no purpose except the construction and maintenance of a canal in accordance with all the stipulations of our treaty with Great Britain. We cannot be false to those stipulations without adding to the breach of contract a breach of the trust which we have assumed, according to our own declarations, for the benefit of mankind as the mandatory of civilization."