PANAMA CANAL TOLLS

SPEECH

OF

HON. NATHAN GOFF

OF WEST VIRGINIA

IN THE

SENATE OF THE UNITED STATES

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The Senate, as in Committee of the Whole, had under consideration the bill (H. R. 14385) to amend section 5 of an act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation of the Canal Zone, approved August 24, 1912.

Mr. GOFF. Mr. President, we are considering to-day a bill the object of which is to repeal legislation that has had the unqualified approval of the voters of this Nation. The people have fully considered, accurately weighed in the balance the domestic and international question involved, and have by an overwhelming majority—a regular avalanche of ballots—decided that they are not wanting in merit, that the Congress was wise and patriotic when it exempted from tolls our coastwise ships when passing through the Panama Canal.

Our situation as a Nation is most peculiar, altogether anomalous, really distressing, verging even on the pitiful. Like a mighty vessel upon a stormy sea without a navigator, our Ship of State is drifting, carried along by a political current pregnant with disaster at home and frightful entanglements abroad.

In November, 1912, at a general election held throughout the Nation, 15,034,800 votes were cast, of which Woodrow Wilson received 6,293,120, William H. Taft 3,485,082, Theodore Roosevelt 4,119,588, Eugene V. Debs 901,839, Eugene W. Chafin 206,427, and Arthur E. Reimer 28,750. Of these votes 13,897,784—the Wilson, Taft, and Roosevelt votes—were polled openly, enthusiastically, patriotically in approval of the act exempting our coastwise vessels from the payment of tolls, and I am warranted in saying that the other votes were cast with like intention. In fact, rather marvelous, most unusual, it was 15,034,800 unanimous votes polled in behalf of a great cause—a most unique and inspiring tribute to the loyal sentiment of the Nation.

Diverse and distracted as our citizenship was on other questions of political thought and economic policy, paradoxical as it may seem, the candidate who received 6,293,120 votes, and against whom 8,741,608 votes were cast, was elected, and is now our President. The convention that nominated him adopted a platform containing a plank which declared for free tolls, such declaration receiving the full approval of the candidate

[redacted]

When the Democratic national convention met in Baltimore and promulgated that platform the situation was different from what it is now, for it was then popular and regarded as a patriotic duty to advocate the exemption from tolls of coastwise vessels. It was not then considered as a subsidy, but as an honest, legitimate effort to aid our merchant marine, and to restore our flag to the seas from which it had been driven. The Democratic Party solemnly pledged its policy and its candidates to the legislation that granted free tolls to coastwise ships. It was not an oversight; it was not a mistake; it was not "just slipped in." It was duly considered and regularly adopted. The distinguished gentlemen who composed that convention, shining lights in the management of that great party into the keeping of which the destinies of this Nation are now confided, are not highly honored by those who now say that when that convention read into its creed the words, "We favor the exemption from tolls of American ships engaged in coastwise trade passing through the Panama Canal," it did not appreciate the importance and magnitude of the matter involved.

It is with pleasure that I note quite a number of those to whom I have just made reference have emphatically repudiated this suggestion. The Democratic convention was right, wonderful as it may seem, when it incorporated those words into its platform. The Democratic candidate for President, speaking in favor of those words, was right; but when he, as President, says to the Congress in substance, that the words are vicious and that the provision should be ungrudgingly repealed, he is everlastingly wrong.

If the convention promises then so made are now to be disregarded, what confidence will the people have in the plighted faith of party platforms? In plain words, Mr. President, if they were made to be disregarded at will, if party platforms are not now binding as once they were, then our system of government for the people and by the people has received such a blow that it will require the adoption of other rules, of better methods, before the voters will again trust those who have so deceived them.

Mr. President, let me call attention to what some of our Democratic friends, some of them Members of the Senate, all of them men of character and well-earned renown, have said concerning this plank in their platform. I read from statements purporting to come directly from them, published in reputable journals, and, so far as I am advised, no one has denied or corrected them.

I find in the New York Evening Journal, March 30, 1914, the following interview with Senator J. K. VARDAMAN. I regret he is absent.

Senator J. K. VARDAMAN, of Mississippi, member of the Democratic platform committee at the Baltimore convention, made this statement in connection with the fight for free tolls:

"I have no more respect for the integrity of a man who will violate a pledge made in the performance of a public duty than I have for a man who accepts a bribe to control his official conduct.

"I agree with Mr. Bryan 'that a certain man who would win office on a platform and then violate it is an embezzler of power and guilty of a crime of as great moral turpitude as a soldier who would betray his country in time of war.'

"When the question of repealing the law permitting American ships engaged in the coastwise trade to pass through the canal free of tolls came up I was curious to know what the President was going to say in explanation of his change of front. I thought he would take the Congress into his confidence and that we would reason together about this matter.

"But when he simply said that we should do this because he asked us to do it, and do it ungrudgingly, I thought that message an affront to the intelligence and patriotism of every Member of Congress."

I see the distinguished Senator from Mississippi [Mr. VARDAMAN] now honors me with his presence, and if this publication is not correct I beg that he will advise me.

Mr. VARDAMAN. I do not know what the Senator reads.

Mr. GOFF. I read from what purports to be a statement of yours made March 30, published in the New York Evening Journal.

Mr. VARDAMAN. I did not hear the article. Will the Senator state what it is?

Mr. GOFF. I am reading it now.

Mr. VARDAMAN. I will listen to the Senator.

Mr. GOFF. I have already read a portion of it, which I will hand the Senator.

"It reminded me"—

Still quoting from my brother Senator—

"It reminded me of the schoolmaster who tells his pupils to go to their classroom, ask no questions, but leave the matter to the superior intelligence and patriotism of the professor.

"I was a member of the platform committee of the Baltimore convention"—

Pardon me for a moment when I say that I think the entire statement is an admirable one.

"This canal-toll question was considered carefully, and it was as much the mature judgment of the convention as any other plank in the platform.

"After the convention the President approved it. Mr. Bryan approved it. The American people approved it.

"Now, to ask Democrats elected on that platform to betray their constituents and violate instructions given by them in their votes at

the Baltimore convention is asking a little more than my sense of right and loyalty to my constituents will permit me to do.

"It is most unfortunate that this great problem can not be discussed without imputing improper motives to the men who made it possible for Mr. Wilson to be elected President.

"I believe the Government has the right to pass through the canal free of tolls not only our coastwise shipping but our own ships engaged in international commerce. I do not believe free tolls to all American ships would be an injustice to any other nation.

"But I am much more interested in deserving the commendation of my own people than I am in earning the applause of foreign nations by maintaining 'our reputation for generosity.'

"The President's position—

Still quoting—

"is absolutely indefensible. The proposition to yield to the dictation of a European power in this matter is humiliating. Rather than violate the pledge I have made to my constituents, I would resign my seat in the Senate. I want to say that it is no justification for the perfidious and sycophantic betrayal of constituents to say that the President advises it. The President is as much the creature of the voter as I am, and he can never rise superior to his creator.

"I dissent emphatically from certain gentlemen that Senators and Representatives are called upon to follow the President. The ideas expressed by the President are accepted by me at their intrinsic value.

"I am not going to criticize Mr. Bryan. His great desire to work in harmony with the President seems to have operated as a kind of hypnotic spell. Instead of the strong voice I expected him to be, he seems to be content to play the part of the echo."

So endeth the chapter.

I quote now from another distinguished Member of the Senate, Senator WALSH, also a delegate to the Baltimore convention, who always is candid, knowing well how to clearly express his views. He is reported in the American Economist of March 6, 1914, in these words:

While I have regarded the transactions within the resolutions committee as more or less confidential, I am willing to give my recollection of the steps by which the free-tolls plank became a part of the Baltimore platform. Recent imputations in the newspapers may tend to create the impression that there was something disingenuous, mysterious, or sinister in respect to the matter. There was not. On the contrary, there was nothing connected with it which affords the slightest foundation for such a charge or suspicion. The plank was offered in the subcommittee of eleven by Senator O'GORMAN. Opinion in its favor seemed so unanimous that there was practically no debate. At the suggestion of Mr. Bryan, ships owned by railroad companies were barred from using the canal, and the fact that this latter suggestion was found in the Baltimore platform, along with the approval of free tolls for coastwise vessels, shows plainly that the subcommittee was fully cognizant of the existence of the free-tolls plank.

These matters—

Still quoting now from Senator WALSH—

along with others, were then referred to a subcommittee of four. The four were Mr. BRYAN, Senator POMERENE, Senator O'GORMAN, and myself. We reported back on all the planks now in the Baltimore

platform, and I was assigned to put the sections in their proper sequence. I did this, including the tolls provision. The subcommittee of four heard and approved them. The subcommittee of 11 heard and approved them, and then the entire resolutions committee was called together, the platform was read, approved, and later adopted by the convention. Thus each plank passed through several stages of preparation and could not have failed to be known to all attending the meeting of the committee or the various subcommittees.

Now, I want to read a statement that was made and submitted by the distinguished leader of the House of Representatives, Mr. UNDERWOOD. I quote:

I believe that the Democratic Party was both wise and patriotic when it announced a policy in favor of discriminating in favor of our coastwise ships in the Panama Canal.

There is no reason at this time why we should abandon a solemn promise made to the American people in one of the most prominent planks in our party platform.

But we are told that we are violating a solemn treaty made with another nation, and in good faith should abandon the canal to foreign rivals without contest or dispute in order that we may keep our standing in the family of nations.

Not for one moment do I believe that we have violated a treaty right and not for one moment do I believe that the English Government seriously contends that we have violated a treaty right.

Our whole difficulty in the matter arises from the un-American spirit of surrender.

A letter was written a short time since by a distinguished citizen of the Nation, the editor of a great Democratic journal. It is addressed to an unknown Senator, or, at least, the name of the Senator to whom the letter was sent has not been made public. Let me read it:

MY DEAR SENATOR ———:

You advocate cloture. All of the opponents of such a method call it gag rule. You believe, as you say, in the will of the majority, and maintain that it is only through cloture that the will of the majority can find expression.

Undoubtedly you are right in the abstract. We are all for majority rule in the abstract. But let us take a concrete case now before the Senate, and see if gag rule means majority rule.

Suppose, by a chain of circumstances, a party is in power which is in reality a minority party, which was elected by less than a majority of the votes cast, which was elected because the opposition was divided, which represents the sentiment of a minority of the voters and does not even accurately or, sometimes, even honestly, represent that sentiment.

Supppose that all three parties in the late election, representing the vast majority of the citizens, and practically the sum total of the citizens, had pledged themselves to a certain measure. Suppose that the party elected had pledged itself to that measure specifically and definitely and positively in its platform. Suppose that the leader of the party in his speeches had committed himself to that particular plank of the platform, and had distinctly stated that the plank was not inserted in the platform merely as molasses to catch flies, but to be honestly and sincerely carried out by the party if elected.

Then suppose that this traitorous party should repudiate its own platform, and this dishonest leader should ignore his own personal pledge. Suppose those elected representatives of the people should defy the will of the people as expressed in the platform of the three parties appealing to the people for their votes, and should act contrary to the will of the people and contrary to the specific pledges of the individuals elected and the definite declaration of their platform.

Ought not some obstacle be put in the way of this betrayal of public trust until the citizens of the country shall have an opportunity to express their opinion of such treachery, and to repudiate such a perjured party at the polls?

Personally I think that every effort should be made to prevent such a conscienceless party from violating its pledges and from betraying the people's trust and the people's interests. and I think that the party will have reason to thank the men who, by means of deliberate debate or any other method, can prevent this party from taking a course so suicidal to itself, so harmful and humiliating to the country.

Assuredly, if it is not prevented from taking such a course, every man in this country who believes in the sanctity of a party pledge or in ordinary honorable dealings between man and man, will do his best to punish such a party and rebuke such a betrayal of popular government, which is government in accordance with the will of the majority of the people.

I, too, believe in majority rule, in genuine majority rule, in a platform which appeals honorably to the support of the people and abides honorably by the expressed will of the people, and I am going to labor for such majority rule and for some party which honestly represents it, not only in its professions, but in its practice.

Sincerely,

WILLIAM RANDOLPH HEARST.

Ex-President Roosevelt, referring to this matter, said:

I believe that the position of the United States—as to the Panama Canal—is proper as regards this coastwise traffic. I think that this does not interfere with the rights of any other nation. No ships but our own can engage in coastwise traffic, so that there is no discrimination against other ships when we relieve the coastwise traffic from tolls. I believe that the only damage that would be done is to the Canadian Pacific Railway. * * * We are benefiting the whole world by our action at Panama, where every dollar of expense is paid by ourselves. In all history I do not believe you can find such great and expensive work as the Panama Canal, undertaken not by a private corporation but by a nation, as generously put at the service of all mankind.

In his message of August 18, 1912, written after receipt of the first formal British protest against tolls exemption, after the passage of the bill by the House of Representatives, President Taft said:

After full examination of the treaty and of the treaty which preceded it, I feel confident that the exemption of the coastwise vessels of the United States from tolls and the imposition of tolls on vessels of all nations engaged in the foreign trade is not a violation of the Hay-Pauncefote treaty.

I am sure that it is not the intention of Congress to violate the Hay-Pauncefote treaty or to enact anything inconsistent with its provisions, and that it certainly is not its purpose to repeal, by subsequent enactment, the treaty in so far as it represents the law of the land.

The President, then a candidate, had carefully considered this platform and found it to correctly enunciate the policy of the Democratic Party as well as his own views. I would not for one moment do him the injustice of intimating to the contrary. In his letter of acceptance he said:

> They say—
>
> Referring to the platform—
>
> it is a very practical document. We are now about to ask the people of the United States to adopt our platform. We are about to ask them to intrust us with office and power and the guidance of their affairs.

I can but wonder why the President changed his views, why he discarded his platform as to this particular matter, why he asked for the repeal of the legislation the essence of which his party had approved. We all were surprised and we all continued to wonder, waiting for the President or for time to advise us of the urgent reasons that actuated him. From the fact that in his message to the Congress he declares that the legislation we are considering clearly violates the Hay-Pauncefote treaty, and that he asks for its repeal in support of the foreign policy of the administration, are we not justified in concluding that our differences with Great Britain had some connection with the "other matters of even greater delicacy and nearer consequence"?

In this connection, Mr. President, I also call attention to the action of the President recently, when a committee representing the suffragettes called upon him asking his assistance to their cause. He then said he was unable to grant the request of our petitioning sisters because the Baltimore convention was silent so far as woman suffrage was concerned. At that time he, as the head of his party, was bound also by the fact that the platform did not advocate suffrage—so he said—but on the question of tolls, though the platform favored their exemption, he refuses to follow it. "Consistency, thou art a jewel."

The message which the President submitted to Congress, to which I have just made reference, was eloquent, feelingly made, extremely smooth and graceful, superb in diction, strong in expression; all in all, it was decidedly the most remarkable state paper ever submitted to the judgment of this Nation.

The distinguished Senator from Missouri, the chairman of the Committee on Foreign Relations, judging from his recent address on this subject, is not in accord with the Executive. He does not believe that the act of the Congress exempting coastwise vessels from tolls is in violation of the treaty, and he is of opinion that under the treaty the Congress has the right to exempt from tolls all vessels that carry our flag; and he is right.

I was surprised at one statement that the chairman of the Committee on Foreign Relations made, and that was this:

> We have now taken up this question on our own initiative. No foreign country is making any effort or in any wise attempting to exercise an influence, so far as I know, intended to affect the legislation upon which we are now engaged.

Without detaining the Senate by reading it, let me state the fact that our diplomatic correspondence reveals, what the country well knows, that over a year since Great Britain made her personal protest against the Panama Canal act, insisting, in effect, that it discriminates against Canadian vessels doing business with Pacific ports, because Canadian shippers would send their goods to American ports and to American vessels, and also because it would increase the rates which all other vessels would have to pay in order to make the canal meet expenses.

Mr. President, what does our President mean when he says in his said message, speaking of the treaty—

> Its meaning is not debated outside the United States. Everywhere else the language of the treaty is given but one interpretation, and that interpretation precludes the exemption I am asking you to repeal.

It is not often that President Wilson is mistaken on questions relating to existing facts, but when he says that "everywhere else the language of the treaty is given but one interpretation," it is quite evident that he has not been correctly advised. In England, in Germany, in France, eminent legal authorities have not hesitated in saying, in substance, that the tolls exemption is in entire harmony with our treaty obligations. The London Law Review, a publication of acknowledged authority in England, commanding the respect of the English bar, discussing this matter, concludes as follows:

> To sum up, it is reasonably arguable:
>
> (a) That the United States can support its action on the precise words of the material articles of the treaty; that its case is strengthened by reference to the preamble and context, and that its case is difficult to challenge on grounds of general justice;
>
> (b) There is no international obligation to submit the construction of its legislative act by any process of arbitration; and
>
> (c) That any aggrieved party has an appropriate, and impartial, and a competent tribunal in the Supreme Court of the United States.

Other authorities, learned lawyers, constitutional writers, international authors, in London and in Germany have expressed the same view.

Mr. President, the canal-tolls question, as it presents itself to me, is one of supreme importance to all of our industrial enterprises, for, if we pass this repeal bill, we strike a terrible blow to our home factories, mills, industries, and labor. President

Wilson has inaugurated it, but all of the shipping interests of all foreign lands are interested, and are engaged in endeavoring to bring about the repeal of the tolls-exemption act. Why? Because it would give to foreign manufactures and foreign ships the entire market of all the Pacific coast—ours and southward of ours. Why? Because it would enable them to reach Pacific coast ports and sell their products at prices that would make it impossible for our manufactures, for our industries of every kind and description, including iron, coal, lumber, and all the products of the factories and mills of our eastern States, of Virginia, West Virginia, Alabama, Texas, and Louisiana—and really the entire Mississippi Valley—to ever reach the markets of the Pacific coast, or to compete for the wonderful trade the construction of the canal will inevitably open up to the west thereof. Why? English, German, French, and other foreign shipowners are enlarging their tonnage, buildin · new vessels, organizing new crews. Why? Because they are calculating to carry heavy cargoes from the Pacific coast and beyond over to Europe, cargoes from Pacific lands as well as our Pacific ports, consisting of wheat, flour, lumber, and fruit. When going for these cargoes it will pay them handsomely if they will carry the manufactured goods of England and the Continent at a very moderate rate on the outward-bound trip, expecting to reap a rich harvest on the homeward journey, and in addition to that, all those vessels will be aided by the fact that their governments pay their tolls, while our ships engaged in overseas commerce will have to pay tolls for going through our canal. I hope such may not long be the result of our legislation.

Mr. President, for a short time I want to discuss the Clayton-Bulwer treaty, and what I shall say referring to it is equally applicable in many respects to the Hay-Pauncefote treaty. I am not going to read those treaties now, but I ask that certain portions of them may be incorporated in my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

The matter referred to is as follows. Extracts from the Clayton-Bulwer treaty of April 19, 1850.

The Governments of the United States and Great Britain hereby declare that neither the one nor the other will ever obtain or maintain for itself any exclusive control over said ship-canal, agreeing that neither will ever erect nor maintain any fortifications commanding the same or in the vicinity thereof, or occupy, or fortify, or colonize, or assume or exercize any dominion over Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America.

The Governments of the United States and Great Britain, having not only desired, in entering into this convention, to accomplish a particular object, but also to establish a general principle, they hereby

agree to extend their protection, by treaty stipulations, to any other practicable communications, whether by canal or railway, across the Isthmus which connects North and South America, and especially to the interoceanic communications, should the same prove to be practicable, whether by canal or railway, which are now proposed to be established by the way of Tehuantepec or Panama.

Mr. President, by this treaty the United States departed for the first time from the principles enunciated in the Monroe doctrine, and I indulge the hope that no such deviation will ever hereafter be made. Had the treaty not included the language of the second extract from it, to which I have referred, the United States would have been relieved of a great deal of controversy and of a wonderful amount of vexatious correspondence. That doctrine, announced by President Monroe, but in fact formulated by John Quincy Adams, was simply a notice to all European powers that the United States would not permit any of them to interfere on this hemisphere and would not tolerate colonization by any of them on any portion of South American soil.

The fact is that the Clayton-Bulwer treaty, from the very time of the exchange of ratifications, has been persistently and continuously violated by Great Britain. Will anyone controvert it? The United States intended by this treaty to obtain from Great Britain a surrender of all her claims to territory in or sovereignty over any part of Central America, and yet almost immediately after the ratification of said treaty we find that Great Britain was extending her colony on the Honduras coast, as well on the Mosquito Islands, and was also claiming jurisdiction over the islands near by. The United States protested, Great Britain continued to disregard the treaty, and finally, in 1856, at the suggestion of the United States, a convention was held in London for the purpose of adjusting, if possible, the then existing differences. The claim of Great Britain was not sustained, and a new treaty substantially in accord with the insistence of the United States was prepared and ratified by the United States, but finally rejected by Great Britain, and the old controversy thus restored continued to disturb our diplomatic relations with that country.

On October 22, 1857, Lord Napier, in writing to Lord Clarendon concerning the Clayton-Bulwer treaty, said, relating to an interview he had had with President Buchanan:

The President commenced his observations by referring to the Clayton-Bulwer treaty as a fruitful source of misunderstanding between the contracting parties. Without that treaty the United States and Great Britian might long since have cooperated for the welfare of Central America. That treaty had never been acceptable to the people of the United States, and would not have obtained a vote in the Senate, had the least suspicion existed of the sense in which it was to be construed

by Great Britain; yet if it were now the intention of Her Majesty's Government to execute it according to the American interpretation, that was as much as he could insist upon.

* * * * * * *

I added that his excellency was well aware of the convictions conscientiously held in England respecting slavery, and of the respect which Her Majesty's Government owed to public feeling on that subject. I might plainly affirm that a principal motive in framing securities for the after government of the Bay Islands had been the apprehension that, when relinquished by the English authorities, those islands would be settled by planters from the United States, who would bring their negroes with them, and thus establish slavery on soil which had, justly or unjustly, been declared to be a colonial dependency of Great Britain.

This is what President Buchanan says about it in his message of December 8, 1857:

Since the origin of the Government we have been employed in negotiating treaties with that power, and afterwards in discussing their true intent and meaning. In this respect the convention of April 19, 1850, commonly called the Clayton and Bulwer treaty, has been the most unfortunate of all, because the two Governments place directly opposite and contradictory constructions upon its first and most important article. Whilst in the United States we believe that this treaty would place both powers upon an exact equality by the stipulation that neither will ever "occupy, or fortify, or colonize, or assume, or exercise any dominion" over any part of Central America, it is contended by the British Government that the true construction of this language has left them in the rightful possession of all that portion of Central America which was in their occupancy at the date of the treaty; in fact, that the treaty is a virtual recognition on the part of the United States of the right of Great Britain, either as owner or protector, to the whole extensive coast of Central America, sweeping round from the Rio Hondo to the port and harbor of San Juan de Nicaragua, together with the adjacent Bay Islands, except the comparatively small portion of this between the Sarstoon and Cape Honduras. According to their construction, the treaty does no more than simply prohibit them from extending their possessions in Central America beyond the present limits. It is not too much to assert, that if in the United States the treaty had been considered susceptible of such a construction, it never would have been negotiated under the authority of the President, nor would it have received the approbation of the Senate. The universal conviction in the United States was, that when our Government consented to violate its traditional and time-honored policy, and to stipulate with a foreign government never to occupy or acquire territory in the Central American portion of our continent, the consideration for this sacrifice was that Great Britain should, in this respect, at least, be placed in the same position with ourselves.

Whilst we have no right to doubt the sincerity of the British Government in their construction of the treaty, it is at the same time my deliberate conviction that this construction is in opposition both to its letter and its spirit.

Under the late administration negotiations were instituted between the two governments for the purpose, if possible, of removing these difficulties; and a treaty having this laudable object in view was signed at London on the 17th October, 1856, and was submitted by the President to the Senate on the following 10th of December.

Mr. Blaine, Secretary of State, writing to Mr. Lowell, minister to England, under date of November 19, 1881, says:

SIR: In pursuance of the premises laid down in my circular note of June 24 of this year touching the determination of this Government with respect to the guaranty of neutrality for the interoceanic canal at Panama, it becomes my duty to call your attention to the convention of April 19, 1850, between Great Britain and the United States, commonly known as the Clayton-Bulwer treaty.

According to the articles of that convention the high contracting parties, in referring to an interoceanic canal through Nicaragua, agreed "that neither the one nor the other will ever obtain or maintain for itself any exclusive control over said ship-canal, and that neither will ever erect or maintain any fortifications commanding the same or in the vicinity thereof." In a concluding paragraph the high contracting parties agreed "to extend their protection by treaty stipulations to any other practical communications, whether by canal or railway, across the Isthmus * * * which are now proposed to be established by way of Tehuantepec or Panama."

This convention was made more than thirty years ago under exceptional and extraordinary conditions which have long since ceased to exist—conditions which at best were temporary in their nature and which can never be reproduced.

The remarkable development of the United States on the Pacific coast since that time has created new duties for this government, and devolved new responsibilities upon it, the full and complete discharge of which requires in the judgment of the President some essential modifications in the Clayton-Bulwer treaty. The interests of Her Majesty's Government involved in this question, in so far as they may be properly judged by the observation of a friendly power, are so inconsiderable in comparison with those of the United States that the President hopes a readjustment of the terms of the treaty may be reached in a spirit of amity and concord.

The respect due to Her Majesty's Government demands that the objections to the perpetuity of the convention of 1850, as it now exists, should be stated with directness and with entire frankness. And among the most salient and palpable of these is the fact that the operation of the treaty practically concedes to Great Britain the control of whatever canal may be constructed.

The insular position of the home government, with its extended colonial possessions, requires the British Empire to maintain a vast naval establishment, which in our continental solidity we do not need, and in time of peace shall never create. If the United States binds itself not to fortify on land, it concedes that Great Britain, in the possible case of a struggle for the control of the canal, shall at the outset have an advantage which would prove decisive, and which could not be reversed except by the expenditure of treasure and force. The presumptive intention of the treaty was to place the two powers on a plane of perfect equality, with respect to the canal, but in practice, as I have indicated, this would prove utterly delusive, and would instead surrender it, if not in form, yet in effect, to the control of Great Britain.

The treaty binds the United States not to use its military force in any precautionary measure, while it leaves the naval power of Great Britain perfectly free and unrestrained; ready at any moment of need to seize both ends of the canal, and render its military occupation on land a matter entirely within the discretion of Her Majesty's Government.

The military power of the United States, as shown by the recent Civil War, is without limit, and in any conflict on the American continent altogether irresistible. The Clayton-Bulwer treaty commands this government not to use a single regiment of troops to protect its interests in connection with the interoceanic canal, but to surrender the transit to the guardianship and control of the British navy. If no American soldier is to be quartered on the Isthmus to protect the rights of his country in the interoceanic canal, surely, by the fair logic of neutrality, no war vessel of Great Britain should be permitted to appear in the waters that control either entrance to the canal.

In speaking of this treaty, ex-Secretary of State John W. Foster says (pp. 456–458, A Century of American Diplomacy, 1901):

Mr. Clayton, then Secretary of State, entered into negotiations with the British minister, the result of which was the treaty by which the two governments stipulated for a joint guaranty of the canal to be constructed; and agreed not to occupy, fortify, colonize or assume or exercise any dominion over any part of Central America. The treaty was ratified without much discussion, in the belief that it would insure at once the construction of the canal and would exclude British colonization and protectorates from Central America; but it was no sooner published than it began to be a source of dispute as to its scope and meaning. Secretary Blaine, in 1881, described it as "misunderstandingly entered into, imperfectly comprehended, contradictorily interpreted, and mutually vexatious." President Buchanan said, in 1857, that if in the United States the treaty had been considered susceptible of the construction put upon it by Great Britain, it never would have been negotiated, nor would it have received the approbation of the Senate. Mr. Cass, who was a member of the Senate at the time it was ratified, has made a similar declaration.

The American expectation as to the early construction of the canal, with the aid of British capital, was disappointed; and for the next ten years our secretaries of state were occupied in bringing the British Government to an observance of its engagements respecting colonization and protectorates. The treaty marks the most serious mistake in our diplomatic history, and is the single instance, since its announcement in 1823, of a tacit disavowal or disregard of the Monroe doctrine, by the admission of Great Britain to an equal participation in the protection and control of a great American enterprise. The wisdom of that doctrine is most signally illustrated in the effects of this single disavowal, the heated discussion engendered, and the embarrassments which the treaty has brought to this Government, and from which it still suffers.

The Clayton-Bulwer treaty was, in my judgment, a fearful mistake, as unfortunate in what it omitted to say as well as in what it did say. As I read it, the United States was bound not to use its military force in matters relating to the canal, while Great Britain was free and unrestrained as to the use of her naval power. Had the canal been built she could at any time have seized both ends of the canal with her battleships, but if an American soldier was needed to protect the interests of his country, he was prohibited from doing so.

Why that treaty was not declared abrogated is to me one of the mysteries of diplomacy. Likely our representatives deemed

it best by convention and treaty distinctly to abrogate it rather than to submit to questions that might have been raised in an international controversy. But, nevertheless, the treaty was dead, and there are many who think it should have been so declared by congressional enactment. A careful consideration of the correspondence between Mr. Webster, Mr. Lawrence, Lord Malmesbury, Mr. Marcy, Mr. Buchanan, Lord Clarendon, Lord Napier, the Earl of Clarendon, Gen. Cass, Mr. Fish, Mr. Lowell, Lord Granville, and Mr. Blaine, commencing in 1851 and terminating in 1882, will, I think, compel concurrence with the view I have expressed; that it would have been entirely proper, eminently just and honorable, for the Congress to have so legislated.

Mr. President, there are a number of methods by which treaties may be abrogated or amended, and sometimes they work their own repeal. Charles Henry Butler, in his standard work entitled "Treaty Making Power of the United States," volume 2, page 129, section 384, discussing this matter, says:

In the cases cited which have involved treaty stipulations and Federal statutes, treaties have either been, or have not been, carried into effect by subsequent legislation of Congress; or statutes subsequently passed in conflict with treaties have been held to be constitutional, and to have superseded or modified the treaty, although in many instances clearly in violation of the stipulations therein contained. There are other instances, however, in which the court has held that the treaty is not superseded or modified, but is entirely abrogated and ceases to bind either nation or the citizens and inhabitants thereof. Treaties, which expressly so provide, may expire by limitation of time, determined by the treaty itself; they may also be abrogated, so far as the United States is concerned, by congressional action in several different methods.

First. Either by a formal resolution or act of both Houses of Congress approved by the President, or, in case of his refusal to approve it, passed over his veto by two-thirds of both Houses, in which case it becomes the latest expression of the Legislative department of the Government and, therefore, the supreme law of the land, and the Executive department is bound to carry out the wishes of the Legislature in express terms.

Second. By legislation, not abrogating the treaty in terms, but terminating the relations existing thereunder, or rendering them impossible of continuance, by enacting legislation hostile thereto, or conflicting therewith, and which may supersede the treaty as to the special stipulations affected, or in effect abrogate it altogether.

Third. By legislation, which, while it does not directly, in terms, abrogate the treaty, either in whole or in part, or by direct words suspend the operation of any of the provisions, so conflicts therewith that the doctrine of repeal by implication applies thereto as it would to statutory provisions similarly affected; it having been held by the Supreme Court that when a statute can not be rationally construed without repealing conflicting clauses of a previously existing treaty, the treaty must fall and the statute must remain as the latest expression of the legislative will.

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Fourth. By a declaration of war in which case treaties with the hostile power are either by force of the declaration suspended during the war or abrogated altogether.

In the same work, volume 1, page 405, section 266, the author, referring to treaties, quotes from "Story's Commentaries on the Constitution," a work that from 1833 has been a standard authority and guide, as follows:

It is, therefore, indispensable that they should have the obligation and force of a law, that they may be executed by the judicial power, and be obeyed like other laws. This will not prevent them from being canceled or abrogated by the Nation upon grave and suitable occasions; for it will not be disputed that they are subject to the legislative power, and may be repealed, like other laws, at its pleasure, or they may be varied by new treaties.

In "Treaties, Their Making and Enforcement," by Samuel B. Crandall, pages 116–7, it is stated:

That a treaty may repeal a prior act of Congress, has been frequently affirmed in individual opinions both of the justices of the Supreme Court and of the attorneys-general. Mr. Justice Harlan, in the recent case of the United States *v.* Lee Yen Tai, while holding the treaty of March 17, 1894, with China and the act of May 5, 1892, relative to judicial procedure in the deportation of Chinese laborers, to be not inconsistent, observed, "That it was competent for the two countries by treaty to have superseded a prior act of Congress on the same subject, is not to be doubted; for otherwise the declaration in the Constitution that a treaty, concluded in the mode prescribed by that instrument, shall be the supreme law of the land, would not have due effect. As Congress may by statute abrogate, so far at least as this country is concerned, a treaty previously made by the United States with another nation, so the United States may by treaty supersede a prior act of Congress on the same subject."

Another and perhaps the most notable example of the apparent violation of treaties by the United States through congressional action was the exclusion of the Chinese from our ports, notwithstanding treaty stipulations as to reciprocal rights of subjects of the Chinese Empire and citizens of the United States to freely come and go, each in the territory of the other. The Chinese exclusion acts were claimed by many to be in direct violation of these treaty stipulations, and the various acts were tested in the courts and numerous decisions were rendered as to their validity and constitutionality. The courts uniformly sustained the acts as constitutional. In 1889 Judge Field delivered a leading opinion of the Supreme Court on this subject in one of the Chinese cases, from which the following extract is taken:

The validity of this act, as already metioned, is assailed as being in effect an expulsion from the country of Chineses laborers in violation of existing treaties between the United States and the government of China, and of rights vested in them under the laws of Congress. The objection that the act is in conflict with the treaties was earnestly

pressed in the court below, and the answer to it constitutes the principal part of its opinion. Here the objection made is, that the act of 1888 impairs a right vested under the treaty of 1880, as a law of the United States, and the statutes of 1882 and of 1884 passed in execution of it. It must be conceded that the act of 1888 is in contravention of express stipulations of the treaty of 1868 and of the supplemental treaty of 1880, but it is not on that account invalid or to be restricted in its enforcement. The treaties were of no greater legal obligation than the act of Congress. By the Constitution, laws made in pursuance thereof and treaties made under the authority of the United States are both declared to be the supreme law of the land, and no paramount authority is given to one over the other. A treaty, it is true, is in its nature a contract between nations, and is often merely promissory in its character, requiring legislation to carry its stipulations into effect. Such legislation will be open to future repeal or amendment. If the treaty operates by its own force, and relates to a subject within the power of Congress, it can be deemed in that particular only the equivalent of a legislative act, to be repealed or modified at the pleasure of Congress. In either case the last expression of the sovereign will must control.

The effect of legislation upon conflicting treaty stipulations was elaborately considered in the Head Money Cases, and it was there adjudged "that so far as a treaty made by the United States with any foreign nation can become the subject of judicial cognizance in the courts of this country, it is subject to such acts as Congress may pass for its enforcement, modification, or repeal." This doctrine was affirmed and followed in Whitiney *v.* Robertson (124 U. S., 190, 195). It will not be presumed that the legislative department of the government will lightly pass laws which are in conflict with the treaties of the country; but that circumstances may arise which would not only justify the government in disregarding their stipulations, but demand in the interests of the country that it should do so, there can be no question. Unexpected events may call for a change in the policy of the country. Neglect or violation of stipulations on the part of the other contracting party may require corresponding action on our part. When a reciprocal engagement is not carried out by one of the contracting parties, the other many also decline to keep the corresponding engagement. In 1798 the conduct toward this country of the government of France was of such a character that Congress declared that the United States were freed and exonerated from the stipulations of previous treaties with that country.

Relating to this treaty, Butler, in his work on "The Treaty-making Power of the United States," supra, says, on page 138, volume 2, as follows:

This question may come before the people of the United States at any time, in regard to the Clayton-Bulwer treaty of 1850 with Great Britain. By this treaty this country and Great Britain are apparently pledged to a joint ownership and control of any trans-Isthmian canal connecting the Atlantic and Pacific Oceans. The treaty contains no provision for its abrogation. It was entered into under peculiar circumstances, at a time when the condition of this country was very different from what it is to-day, and the events which were anticipated in 1850, in view of which the treaty was made, have never transpired. It was undoubtedly a mistake on the part of the Executive to make the treaty and of the Senate to ratify it. The question of its abrogation, however, is one which involves consideration of all of the elements

enumerated in the preceding section. To the author it seems as though it is purely a political act wholly within the domain of Congress; that if the Executive can not obtain the abrogation or proper modification of the treaty through friendly diplomacy, that Congress must eventually determine the question; and if, in the best judgment of the Legislative department of the Government, the present and future safety of the country demands the abrogation of that treaty, Congress has not only the legal power but also the moral right to abrogate it, and the judicial department of the Government could not, and would not interfere to prevent it.

Now we come to the Hay-Pauncefote treaty.

The part of that treaty really in controversy—and the controversy is a most serious one—reads as follows:

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.

This was an agreement between the United States and Great Britain; no other nation or country was a party to it. The United States stipulated with Great Britain that they, subject to the provisions of the present treaty, 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.* The United States, therefore, had the sole and absolute control of the canal, and to me it is inconceivable that they should have deliberately taken into partnership with them concerning the canal—especially in the light of the Monroe doctrine and the experiences under the Clayton-Bulwer treaty—the one nation they had been endeavoring to eliminate from all rights and claims in Central America.

I think it entirely safe to say that the Hay-Pauncefote treaty would never have been ratified by this Senate had there existed the least doubt that the United States was to be master of the situation that would exist after the completion of the canal, with the exclusive right to establish the rules by which it was to be governed, subject only to the understanding that all nations observing said rules should be treated with entire equality in such way as would not discriminate against any of such nations in respect to the conditions or charges relating to traffic, which were to be just and equitable. Are not the rules established by the United States relating to tolls just and equitable to all the nations of the world?

Mr. President, there is only one Nation to which they are not just and equitable, and that Nation is the United States of America. At an enormous expense—in all, nearly $500,000,000—the United States have constructed the canal, and yet the tolls

they have provided for its use will for years to come yield a revenue that will be but little more than what will be required to pay current annual expenses, ignoring even interest on the investment and utterly disregarding the matter of profit. Some of the nations of the world expected a toll rate that would not only have provided for the upkeep of the canal, but that also would have yielded an income to the United States at least sufficient to have paid a reasonable interest on the sum expended for its construction. But the United States, in building the canal, intended primarily to provide for their own national convenience and protection, the late Spanish-American War having conclusively demonstrated that it would be the part of wisdom so to do; and secondarily, the desire of the United States was to advance the interest of their own commerce, as also to accommodate and benefit the commerce of the world; hence the low rate of tolls imposed. I doubt if there is another nation that would have so acted. Great Britain, if we judge the present by the past, would not have done so, for she has imposed tolls for the use of the Suez Canal that not only pays all expenses but also handsome dividends. French money built the Suez Canal, but on its completion English money held a controlling interest in its stock and has always dominated it. But the United States, desiring to be fair and equitable, opens the Panama Canal to the vessels of the world, saying to them all, "Partake freely of the advantages we tender you, subject only to our right of absolute control, with the understanding that our flag is forever to float from the point where you enter to the place where you leave the canal and over its fortifications, a signal of ownership, of power, and of sovereignty."

My insistence is that, so far as her own vessels are concerned, her cruisers, transports, and battleships, as well as the ships of commerce carrying her flag, the United States have the right under the treaty to pass them all through the canal without imposing tolls on any of them. Mr. President, will you tell me, will any Senator here advise me, of the method that will or can be adopted for the United States to pay toll on their own vessels passing through their own canal? Will the officials of the canal impose the usual toll, then draw on the Treasury at Washington for the amount thereof, charging the canal with the same, and then at stated times remit to said Treasury the amount in the hands of said officials due the owner of the canal? By that process how much will it cost the United States to pay their tolls?

I can see how there is ground for difference of opinion as to the expediency of passing some of the vessels of commerce free, but I, for one, conclude that it is not only proper but absolutely

necessary that we do so, for the purpose of encouraging our own commerce and building up our merchant marine. Unless we do this it is quite evident that our vessels engaged in the over-seas trade will soon disappear from all ports and all waters.

The statements of some of those who took part in and who had personal knowledge of what took place when the treaty was being formulated have been filed with the Committee on Foreign Relations and submitted for our consideration.

Such evidence has been heretofore offered when contentions similar to the one we are now to dispose of were before conventions and arbitrators. A rule has been established concerning them. They are only pertinent when the language of the treaty in question is confusing, when it forces the mind to doubt, and are never considered if the intent of the contracting parties can be ascertained without resorting to them. In our controversies with Great Britain we have heretofore encountered this same method of disposing of contentions relating to our treaties. In "Treaties, Their Making and Enforcement," by Samuel B. Crandall, we find on pages 225–6 the following:

> An interesting use of negotiators' testimony may be found in the proceedings of the mixed commission under Article V of the treaty of November 19, 1794, with Great Britain to determine the St. Croix River and its source under Article II of the treaty of peace. The boundaries of the United States as therein defined began with "that angle which is formed by a line drawn due north from the source of St. Croix River to the Highlands." There proved to be no river in that region then known by that name. Under these circumstances President Adams and John Jay, the surviving American negotiators, made depositions, which were duly admitted in evidence, as to the map used by the negotiators. Likewise a letter written by Franklin was introduced as evidence. Extrinsic evidence of intention can not, however, be accepted in contradiction of a literal and natural interpretation.

Another illustration as to the use of the testimony of those acting as negotiators is found in the action instituted to dispose of certain contentions of Great Britain relating to the Clayton-Bulwer treaty. After the ratification of this treaty, and preceding the exchange or communications of the respective governments relating thereto, statements were filed by the negotiators, in which it was said that the language of article 1 of that treaty was not understood to include the British settlement at Honduras and the small islands adjacent thereto. It was in substance held that such statements could not have the effect intended, as they were prepared after the ratification of the treaty by the Senate, and had not been considered by the treaty-making power. It was stated in said proceedings—which repudiated the claim of Great Britain—that if the facts desired

to be ascertained could not be found from the language of the treaty that the statements by the negotiators would be considered, but as the words used clearly expressed the original intent the statements must be excluded. Crandall, supra, page 226.

It will be interesting and instructive, I think, to quote from "Treaties, Their Making and Enforcement," supra, page 224, relative to still another controversy we have had with Great Britain as to the construction of a treaty:

> Article 1 of the treaty of June 15, 1846, between the United States and Great Britain for the establishment of a boundary between their territories west of the Rocky Mountains, provided for the continuation of the forty-ninth parallel westward to the middle of the channel which separates the continent from Vancouver's Island, and "thence southerly through the middle of the said channel, and of Fuca's Straits to the Pacific Ocean." As a matter of fact there proved to be two principal navigable straits—the Canal de Haro and Rosario Strait—leading from the middle of the channel through the archipelago to the Strait of Juan de Fuca. In favor of the British contention for the Rosario Strait, the one nearer the continent, was the fact that a line through the Canal de Haro must proceed for some distance in a westerly direction, instead of southerly, as provided in the treaty. In favor of the American contention was the general purpose of the treaty, which, as indicated by the treaty itself, had without doubt been to adopt the forty-ninth parallel as the line for the division of the disputed territory, and to allow a deflection from that line only in order to avoid dividing Vancouver's Island. This view had been expressed in the Senate at the time of the ratification of the treaty. William I, German Emperor, acting as arbitrator under Article XXXIV of the treaty of May 8, 1871, after seeking the advice of eminent German jurists, rendered a decision favorable to the United States.

John Hay and Lord Pauncefote, who represented their respective Governments in the negotiation of the Hay-Pauncefote treaty, are dead, and can speak only by the record they have made. The Hon. Joseph H. Choate, who was ambassador to Great Britain, and who aided the two distinguished statesmen referred to in the preparation of said treaty, who is, I am glad to say, still living, has given us his recollection on the subject. Others somewhat familiar with the facts connected with the formulation of said treaty have advised with us concerning the same. It will be observed that respectively they give it as their *opinion* that if Mr. Hay and Lord Pauncefote were alive they both would say that the exemption of coastwise ships from the payment of tolls would be in conflict with the treaty. The *opinions* of such eminent men, able and honest as all will concede, are entited to great weight and due consideration as also *are the words of the treaty* used to express the intent of the parties thereto, which, when taken in connection with the statement of Mr. Choate, which I now quote, "I ven-

ture to say that in the whole course of the negotiations of this particular treaty, no claim, no suggestion, was made that there should be any exemption of anybody," demonstrates that the usual meaning of said words should be resorted to in order to properly construe the treaty.

Mr. President, let us bear in mind that the canal is not open to all nations, and never was intended to be open to all nations, but open only to those nations "observing these rules." How is that to be ascertained? I presume before the canal is thrown open to the traffic of the world that our Government will have some understanding relating to that subject with the nations desiring to use the canal. The nations of the world engaged in overseas commerce will express to our Government their intention to observe these rules. Has any of them as yet done so? Not one; and under existing circumstances the only nation in all the world that will not be entitled to the use of the Panama Canal is Great Britain, because in advance she has objected to the rules and indicated that she does not intend to observe them.

Mr. President, as I read the Panama Canal act which we are asked to repeal, it was and is most commendable legislation. Its object, so far as it relates to tolls, is to force real competition in freights, which will aid our producers and shippers and assist in the reduction of the cost of living, at the same time fostering our domestic commerce and forcing the reduction of rates by excluding entirely from the canal all vessels owned and operated by railroads.

Now, Mr. President, it is quite apparent that but for this last provision relating to railroads Great Britain would never have raised this contention. As a matter of fact, she had acquiesced in the releasing of our coastwise vessels, stipulating only for proper regulations regarding them, and she had agreed that they should go through the canal free, but when the Congress in its wisdom saw proper to include with that to which she had so consented a provision that ships owned by Canadian railroads should be prohibited from entering the canal, Great Britain, on the appeal and demand of Canada, presented the contention we are now considering.

The Canadian railroads were affected and the Canadian managers thereof were greatly disturbed, as were those who controlled our own transcontinental railroads. They protested in vain. I commend the Congress for the wisdom it displayed in resisting them. Great Britain felt "constrained" in behalf of her Canadian Provinces to submit this contention, and the Congress felt constrained to decide that it was without merit.

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As the law now stands, as it will remain, even should this repeal bill pass, the ships of the United States engaged in the commerce of the world—all of their ships excepting only those engaged in our coastwise trade—will be the only ships that sail "over seas" that will pay toll for passing through the Panama Canal. Why do I say that? Because England, Germany, France, and Italy now pay all tolls charged against the ships of their respective countries for using the Suez Canal and are arranging to do the same concerning like tolls imposed upon them for passing through the Panama Canal. And Japan is preparing to do the same, as the Senator from Utah [Mr. SMOOT] advises me, for which I thank him. Our ships are struggling now under a burden that I wonder they bear so well as they do. Yet they must pass through the canal owned by their country and whose flag they carry, branded as the only vessels that, in fact, will pay tolls.

It seems, then, Mr. President, that we have built this canal for the benefit of all the nations of the earth, save only one; for the tonnage of all lands, save only one; for the glory of all flags, except only one, and that one the flag of our country. Mirabile dictu!

I believe the day is coming, Mr. President, fast coming, when all our ships will go through free. If this Congress does not so speak, then, after the people of this Nation have spoken, there will be a Congress that will.

You may call such legislation a subsidy if you please, which, technically, it is not, but it will not scare me, for I believe that by and through such governmental policy all other nations have prospered, and I know, also, that their prosperity has driven our ships from the waters of all oceans. I want to encourage our ships, to add to their number, so that in time they will equal in tonnage and dignity those of any other nation of the world.

I would aid our shipbuilders and our shippers as I have just indicated. I would encourage individuals and companies to employ their capital in building ships and in sending them out on the seas, and I would want them to indulge the hope that they would meet with success and be able to declare reasonable dividends on the money they so invest. Such legislation should not, and would not, be permitted to encourage the formation of trusts, for it will always be under the control of the Congress, and will be simply a just recognition of the difficulties under which our ships and our commerce now contend.

Mr. President, I, for one, believe that it is right that the policy of this Government should be such as to indicate to those of our citizens who have the daring to assume the risks of continuous struggles with nature's elements upon the seas, as

also the dangers they will encounter upon the land at home by hostile legislation, that they will at least have the sympathy and encouragement of the Government whose flag their ships will float, as do the vessels of all other nations of civilization. If we but hasten the construction of additional ships, and then by legislation speed their going and their coming, then the Nation that built it will realize some of the advantages that the Panama Canal offers to the world.

Mr. President, am I wrong when I intimate that the time has come for us to speak plainly, to have no further misunderstandings? Is not our experience as to this matter, as shown by our diplomatic troubles relating thereto from 1850 to 1914, sufficient? For me it is. From the early formation of our Government we have been confronted with questions similar to this. By the adoption of our Constitution it became our duty to dispose of others very like them, to which we were obligated by colonial agreements. Is there no way by which we can escape them? Have we not faithfully endeavored to respect our promises? Our fathers knew how to proceed under like circumstances. Washington, Adams, and Jefferson approved of the abrogation of some treaties by congressional legislation. The Supreme Court has repeatedly held that method to be proper and constitutional. It may not be best to adopt such methods as a rule, but there are instances, and this is one of them, where the exhibition of patience has ceased to be a virtue and where additional delay will be a national crime.

I have already referred to the decisions of the Supreme Court sustaining the abrogation of treaties by congressional enactments. Has not the time come for another abrogation? I do not believe that it will be dishonorable to so act, as some have intimated it would be. That which is authorized by the Constitution of the United States and suggested by those who made it can but be honorable. If by our legislative acts anyone has cause of action against us, we will not endeavor to evade our responsibility, but will bow obedience to the decree of the Supreme Court of the United States or willingly yield to the judgment of a properly constituted international tribunal.

The time has come for us to declare that this contention with the subtle diplomacy of Great Britain, now over half a century old, should cease. We ought not longer to submit to the uncalled for interference of a foreign nation in our domestic affairs. Let us throw off the yoke, the burden of which we never should have borne. Let us declare our commercial and industrial independence in a manner that will not admit of doubt, so that all the world will know that it is our intention to hereafter manage our own affairs as to us seems right and just,

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inviting no outside suggestions and permitting no foreign interference. Let us proclaim that the Monroe doctrine is not dead; that it is no longer sleeping; that it will in the future be enforced by the United States as they declared it would be when it was promulgated.

Let us abrogare the Hay-Pauncefote treaty by an act of this Congress. Should this Congress refuse so to do; should it, instead of so acting, repeal the provision of the statute of 1912, exempting coastwise vessels from the payment of tolls, thereby continuing our embarrassing and humiliating entanglements with a nation that has been unjust to us from the landing of the Pilgrims and the coming of the Cavaliers; that has been jealous of us from our Declaration of Independence; that has always sought to retard our progress as we have journeyed along the pathway leading from colonial weakness to national greatness, then the voice of the people will be heard when next the ballots fall and a Congress will convene here that will heed the demands made upon it.

Mr. President, if it be true that our Panama Canal tolls act is in conflict with the Hay-Pauncefote treaty, then that act, so far as that question is concerned, abrogates that treaty. You can not escape that conclusion. I submit it to the consideration of those who claim that the legislation of 1912 is in violation of the Hay-Pauncefote treaty. In that connection I have called attention to the decisions of the Supreme Court, in which that great tribunal has held that if a legislative enactment passed subsequent to the ratification of a treaty is in conflict with the treaty, the treaty stands abrogated. Suppose we repeal the act, would that restore the treaty?

Does the repeal of an act, without words in the repealing act, the effect of which is to restore former legislation, have such an implied effect? You can find no authority for any such contention. Mr. President, what a Pandora's box is to be opened up if this Congress indorses the request of the President!

Mr. President, from the time that Columbus landed on a point near where the city of Colon now is, in the year 1502, searching for the great passage about which he had dreamed; from the time the Portuguese navigator Galvão, after exploring the Isthmus, concluded that a canal could be constructed and presented his scheme to the King of Spain, and his majesty, profoundly impressed, as he was, felt himself constrained for political reasons to suppress that scheme, questions relating to a canal through the Isthmus have attracted world-wide attention. It seems strange to say, but it is a historical fact, that for long years in Spain the suppression of schemes looking to the construction of a canal across the Isthmus was resorted to, and

the severest penalties imposed upon anyone who would dare suggest it. At that time Spain had dominion over the Isthmus, but Spain feared revolution, as well as interference by other nations. While she so hesitated, while she imposed these penalties, she was quietly working to commence the construction of the canal. In the history of Spain it clearly appears that a fund was being provided which the Government believed would justify it in commencing the construction of a canal in 1521.

Before that time arrived the revolution in the Isthmus resulted in the independence of New Granada, and Spain lost her possessions in Central America. For many years thereafter questions relating to a canal were not discussed. Then came the time when there were grants, subgrants, concessions, subconcessions, and treaties, here, there, and everywhere, relating to the construction of an isthmian canal.

After this, in 1878, Colombia gave permission for the construction of a canal virtually from the bay, where Colon is now located, to the Gulf of Panama. Recall that year, 1878, and remember that the Clayton-Bulwer treaty was supposed to be then in force. With that grant De Lesseps, under French auspices, commenced the work of the canal. There was no serious objection to that by either Great Britain or the United States. During that period of French effort we had the first hiatus in our contentions with Great Britain about the Clayton-Bulwer treaty, and that period of respite lasted down to the time when the French made a miserable failure of it; when the reorganized company also failed, and the courts appointed a receiver for it. The appointement of the receiver had a revivifying effect upon our British friends, relative to diplomatic correspondence. It has really always been a surprise to me, and I have been unable to account for the fact, that the authorities of this Government having in charge our foreign relations ever consented to the revival of that correspondence, or ever admitted that there was a breath of international life in the Clayton-Bulwer treaty.

Mr. President, we own the Canal Zone; it is ours for all time for purposes relating to the canal; and no nation will be permitted to question our right or our title to it. We will fortify and defend it against the world, and should there ever arise an issue concerning our right so to do, there are other nations that *quoad* that matter will be our allies. We will have but one flag there, but we will float many of that one kind. It will float as the ships enter, and will greet them all along the way. Let it fly, Mr. President, from that lofty summit now in the Canal Zone—then part of Darien, afterwards a portion of Panama—where in 1511 Balboa, traversing the interior of

that wilderness, believing that he would find the way that led to the northwest outlet, stood upon a lofty peak, which he and his adventurous friends had ascended and in wonder and exaltation looked for the first time upon the waters of the great Pacific. That pinnacle should float our flag, and I trust it will. Our flag should not only greet the incoming vessel, but it should at the exit cheer it on its journey to the marts of the world.

Mr. President, think of the many ships that our flag will welcome, of the many salutes that it will receive! That flag, Mr. President, will speak to the men who man those ships as no other flag can speak. That flag is not dumb; it talks; it typifies much, and many understand what it says and what it means. There will be many men of many minds, of many lands and many climes, of many colors and of many creeds passing on ships flying many flags, and many of them, seeing our flag for the first time, will greet it with bounding hearts and brimming eyes, for in the distant lands from whence they come they have heard talismanic legends and wonderful stories of it, for the glories of that flag are everywhere known, and its fame has gone forth to the uttermost parts of the earth.

Last summer, Mr. President, I found myself in Naples, that beautiful, busy port on the Mediterranean. To see and to learn and to know, I passed considerable time along its numerous docks and wharves, where many, many ships of all kinds come and go to many, many lands. I found numerous nationalities represented there, strange crafts with strange crews, and I heard a bewildering babel of voices. I gazed upon apparently a countless number of flags, floating from ships loading and unloading wonderful cargoes. I saw thousands of men toiling in that work that goes on day and night, season in and season out. I went here, there, and everywhere looking for a flag that my eyes were longing for, but were not permitted to gaze upon, for I found it not. In all that multitudinous array of ships and flags I did not see a vessel that carried our flag.

Why was that so? Mr. President, we will talk about the cause of it at another time.

But during one of my visits along the coast line of that wonderful harbor, admiring those magnificent quays where the commerce of the world is landed and exchanged, I realized that something was profoundly moving that great heterogeneous multitude, toiling that those composing it might live. I did not understand it. I could see nothing that explained it. I could hear nothing that would account for it. At last I understood it. Work ceased, whistles blew, bells were ringing, men were seeking positions controlling a view of the outer harbor of the Mediterranean Sea. A great steamer is approaching. I looked

and the picture was lovely. It filled my soul with joy, for it was altogether beautiful and fair to gaze upon. High aloft, floating proudly, representing power and dignity, was the emblem of our Union, the starry banner of our country, the flag among flags, the one indescribable and indestructible!

I had heard that flag cheered before; but never, Mr. President, with wilder enthusiasm than that motley crowd gave it in that far-away port. They waved at it, they shrieked at it, they threw kisses at it; they were deeply moved, and so was I.

Mr. President, under such circumstances one's heart beats very loud, and his pulses are apt to run wild. Such tribute to his flag, such honor to his country, such recognition of its greatness and its justness indicated that in all lands there is appreciation of the fact that among all nationalities ours is the hope of civilization, and that there is one flag—your flag, Mr. President, our flag, my flag—that stands for all that is worth living for, that speaks for all that is grand of human thought and all that is great of human action. Glorious, exalted beyond description, is that flag—the only flag, Mr. President, that should control the destiny of the grandest gift that, since God said, "Let there be light," and there was light, a nation has ever given to the nations of the world—the Panama Canal.

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