

### WORLD'S DECLARED PLEDGED IN TREATY

#### Other Side of Canal Tolls Question Presented.

#### SPIRIT OF LAW IS CITED

#### Entire Equality Declared Founda- tion of Pact and Selfish Aims Disavowed in Agreement.

PORTLAND, Dec. 13.—(To the Editor.)—Having no doubt of your desire to follow the mission of a great newspaper, a part of which is to give the public different aspects of all questions of national policy, I ask in full confidence that you will grant it, the courtesy of your columns in order to set forth the other side of the question so ably argued by you in favor of free tolls for American ships doing so-called coastwise business through the Panama canal. I regret very much that the array of facts is such that they cannot be stated briefly.

The language of the treaty entered into between the United States and Great Britain, November 18, 1901, is as follows:

"Article 3, section 1.—The canal shall be free and open to vessels of commerce and of war to 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 to the conditions and charges of traffic, or otherwise. Such conditions and charges of traffic shall be just and equitable."

The language of the law passed in 1912, since repealed and which it is now proposed to revive, is as follows: "No tolls shall be levied upon vessels in the coastwise trade of the United States."

#### Exception Held Intended.

On the face of it there is, of course, no question that the law contravenes the treaty; but the language of all instruments, including treaties, is of course subject to interpretation. And it is claimed by the advocates of the law that the intention of the treaty was to exempt the United States, as owner of the canal, from the condition of "no discrimination against any such nation," etc., so that the treaty in effect reads that there shall be no discrimination in favor of any such nation except the United States."

Such a color of construction is a far-fetched inference from what the treaty stated and from what it failed to state, might have if the language stood alone without interpretation, fades away in the light of the defeat, by a vote of 47 to 23, of the following resolution introduced by Senator Bard of California in the debate on the first convention:

"The United States reserves the right in the regulation and management of the canal to discriminate in respect of the charges of traffic in favor of vessels of its own citizens and in the same manner to discriminate against vessels of other nations. The failure of this resolution finally dispelled the improbable theory that the great constitutional lawyers of the senate left in the treaty a stipulation of inconclusive inference so important a condition as the exemption of the United States from the rules that bound all the nations of the world. In other words, such improbability merges into the certainty that they were really, and not by lapse, intentional or otherwise, but that this nation was to stand on exactly the same basis as all others in the matter of tolls."

#### Spirit of Law Disclosed.

So much for the letter of the law. Now for the spirit, as evidenced in the history of the negotiations that led up to the treaty. The facts in the case are as follows: Some time prior to the year 1850 the United States, which had then recently made great strides toward becoming a world power, proposed cutting a canal across the isthmus that separated the two oceans, but found Great Britain in control of the eastern end of the route and possessed of other advantages that made the carrying out of the project impossible without her co-operation. We therefore asked that co-operation and the negotiations resulted in the Clayton-Bulwer treaty of 1850, which was entered into at the urgent request of this country and was looked upon as a concession by England to a friendly power. Mr. Rives, the special envoy of the United States, sent to London to negotiate a treaty that should give this country equal rights with Great Britain in the proposed canal, was instructed to say and did say, to Lord Palmerston, that

"The United States sought no exclusive privilege or preferential right of any kind in regard to the proposed communication and their sincere wish, if it should be found practicable, was to see it dedicated to the common use of all nations on the most liberal terms, and as a guarantee of perfect equality for all—that the United States would not, if they could, obtain any exclusive right or privilege in a great highway which naturally belonged to all mankind."

Of this declaration, Ellihu Root, confessedly the leading constitutional lawyer of this country, said that "is the corner-stone of the rights of the United States on the isthmus of Panama, but that declaration is not all by any means. It is the result of the war of 1861-5, the United States became restive under the conditions of the treaty and the question was raised as to whether the treaty should stand upon us. On this point Richard Olney, Mr. Cleveland's secretary of state (a great democrat, as Mr. Ellihu Root was and is a great republican) issued the following memorandum:

"Upon every principle which governs the relation, to each other either of nations or of individuals, the United States is completely estopped from denying that the treaty is in full force and vigor.

"Second, if changed conditions now make stipulations which were once deemed advantageous, either inapplicable or injurious, the true remedy is not in ingenious attempts to deny the existence of the treaty or to explain away its provisions, but in a direct and straightforward application to Great Britain for a reconsideration of the whole matter."

And that is what was done. Mr. Blaine, United States secretary of state in 1881, had written Mr. Lowell, our minister to Great Britain, directing him to propose to that power a modification of the Clayton-Bulwer treaty, and to say: "Nor in time of peace does the United States need to have any exclusive privileges accorded to American ships in respect to precedence of tolls."

#### Entire Equality Promised.

The Clayton-Bulwer treaty was entered into on that stipulation, and finally secured for the United States the sole ownership of the canal, including all the privileges that had belonged exclusively to Great Britain, without compensation to that country, which presented the single condition that all nations should have

the use of the canal on terms of entire equality, without discrimination in respect to tolls or otherwise. This position she has always held, and promptly on the passage of the law that gave a preference to American ships, notified the state department that that clause constituted what the British government looked upon as an infraction of the treaty. That we induced that country to part with her privileges upon that condition is proved by the statements already quoted coupled with the plain language of the existing treaty, which was the outcome of the representations and negotiations referred to.

To this may be added the important circumstances under which the proposed amendment that declared the right of discrimination was voted down: The proceedings, including the debate, were carried on in the full knowledge of the report of the chairman of the foreign relations committee of the senate, Cushman K. Davis, on the first convention, from which I quote as follows:

"The United States cannot take an attitude of opposition to the great act of October 1884 (the neutralization and equality clause of the Suez canal convention, which was incorporated into the Hay-Pauncefote treaty) without discrediting the past and the declarations of our government for 50 years of the neutrality of the isthmus canal, and its equal use by all nations without discrimination. The Suez canal makes no discrimination in its tolls in favor of its stockholders, and it is equally necessary to differentiate our rates of toll in favor of our own people in order to secure a very great profit on our investment."

#### Selfish Aims Disavowed.

The speaker goes on to say at some length in unequivocal language that the United States didn't claim and wouldn't accept terms that were more generous to itself than to other maritime nations.

"To set up the selfish motive of gain by establishing a monopoly of a highway that derives its revenue from the patronage of all maritime countries would," he says, "be unworthy of the United States if we owned the country through which the canal is to be built."

The senate that ratified the treaty had before it two questions: First—Has this nation the right—a right so clear as to make an assertion of it unnecessary—to discriminate in favor of ships owned by its citizens as against those owned by the citizens of other countries? Second—The question having been raised in the discussion, "Shall this body introduce into the treaty a stipulation that shall give it that right?" And answered both questions in the negative.

#### Discrimination Held Proved.

It is claimed that the proposed exemption, applying as it does only to American vessels engaged in trade, that under our present laws cannot be entered by foreign tonnage, is not discriminatory, but it has been proved abundantly that such exemption would be of that nature. Mr. Root did not hesitate to use the word "discrimination" in his great speech of January 21, 1913; Senator Bard used it in his proposed resolution.

And Mr. Root further said that the exemption clause in the original law had produced "a painful impression throughout the world that the United States has departed from its often announced rule of equality of opportunity in the use of the Panama canal and is seeking a special advantage for itself in what is believed to be a violation of the obligations of the treaty. That opinion of the civilized world is something which we may not rightly disregard. A decent respect for the opinions of mankind was one of the motives stated for the purpose of these colonies in the great Declaration of American Independence."

#### British Concession Cited.

Great Britain having, at our request, surrendered, first, an equal share and later all of her rights in the canal on the sole condition of equal terms to all, and interpreting the exemption clause to be a breach of that condition, as do all the nations of the world except the United States—and we are not agreed among ourselves at that point—we should not array ourselves against Great Britain and the world by the "arrogant assertion of our own interpretation of the treaty which would force England to submit to what she believes to be injustice or go to war."

There is an arbitration treaty between this country and Great Britain under which exactly such cases as this may be submitted to an independent tribunal, and by agreeing to abide by the decision of the court of The Hague we shall maintain the honor of the nation, disarm criticism and cement friendship between us and the other great Anglo-Saxon nations of the world.

W. M. D. WHEELWRIGHT.

#### BUS FRANCHISES WANTED

FIVE OWNERS OF LINES LAY LEGISLATION PLANS.

#### Rights on Various State Highways to Be Asked in Bill to Go Before Legislature.

Five automobile stage line owners, representing different sections of the state, met Friday afternoon at the Imperial hotel and the day previously at the office of the White company and decided to support state legislation favorable to the granting of franchises to the respective companies they represent. Among those who attended the conference were James Stranahan of Hood River, W. L. Lewis of Medford, D. H. Gorst of Marshfield and A. Jalloff and Frank Shepherd of Portland.

It was decided by the stage line proprietors to co-operate in the matter of presenting a bill to the legislature which will provide for the granting of auto stage franchises on various state highways, according to one of those who attended. It is contended by the stage line operators that at present there is individual competition which, after one of the bus concerns has worked up a good business on a certain run, splits up the traffic on that run until trade is sufficient for no one concern. If they are granted franchises, the companies assert, they expect to be operated as any other traffic conveyance and wish state supervision as to the safety of passengers and quality of service rendered by the public.

#### Travelers to Hold Session.

The annual meeting of Post A. Oregon and Washington division of the Travelers' Protective association, will be held at the Multnomah hotel at 2 P. M., December 23. Election of officers and delegates to the state convention will take place. In the evening the annual dance and card party will be held for members of the association, their women friends and guests. The entire mezzanine floor of the Multnomah has been reserved for the occasion.

Phone your want ads to The Oregonian. Main 3076, Automobile 590-95.

### CRATER LAKE PLAN GIVEN

#### REMEDY FOR SO-CALLED NEG- LECT IS OFFERED.

#### Operation of Rainier and Yosemite National Parks Cited as Good Investments.

PORTLAND, Dec. 13.—(To the Editor.)—Your editorial on the neglect of Crater lake, while it covers the situation as well as could be done in so short a space, does not sufficiently indicate the remedy. Much has been done in the last two or three years, and particularly in the last year, to make Crater lake more accessible by the improvement of our main state highways and by the building of new laterals, both from Medford and Klamath Falls to Crater lake. Previously the government had expended a generous sum in a road system within the park, but its programs now lag behind that of the state.

While Mr. Mather is the arch enemy of Crater Lake park, this is due rather to temperamental defects than to lack of ability. He has no special technical inexperience and lack of constructive capacity than to deliberate intent. He cannot be justly blamed for the small amount of money asked for and appropriated to this park any more than he can justly lay claim to any credit for the large sums appropriated for the other parks. These matters are determined by a number of things, chiefly by the number of people who use the several parks, and again is determined by their accessibility, the stage of their development and the demand for improvement on the part of the people who use them. There were in 1910 more than 1,000,000 visitors to all the national parks and only 20,000 of these are credited to Crater lake, in spite of the fact that all employees, concessioners and other repeaters were counted each time they entered the park. Probably not more than 18,000 people visited Crater lake in 1920.

Crater lake is the link in the chain of national parks between Rainier on the north and Yosemite on the south. Rainier had more than 60,000 visitors and Yosemite more than 150,000 in 1920. Is it any wonder that Yosemite demands \$75,000 for 1921, on top of \$350,000 already spent, to keep pace with the demands on it? It is a mighty good investment and the American people approve of it. Is it any wonder that Rainier park demands \$214,000 for 1921 to keep up with the procession? It will cost that much and it is worth it. Twenty-six thousand dollars is an adequate sum to enable poor old Crater lake to limp along in its present place in the procession. Why? This is the reason:

At Rainier 125 of the leading business men of Puget sound have already spent \$350,000 developing the hotel facilities and other accommodations for tourists and are engaged in carrying out a program for the expenditure of \$500,000 more. When this is spent they will probably make it another \$500,000. At Yosemite more than \$500,000 has already been similarly spent and the business men of all over the world are engaged in carrying out a comprehensive plan of developing tourist accommodations to cost \$5,000,000. This is not being done on account of Mr. Mather or through his influence, but in spite of him, simply because the people these states recognize both the opportunity and the necessity for doing this work.

At Crater lake, outside the efforts of one man, how much money has been spent during the last ten years to develop tourist accommodations for the people of Oregon? Not one penny. This is not due entirely to indifference, lack of appreciation, lack of enterprise or lack of wealth on the part of our people. It is due largely to the sinister influence and vicious attitude of the director of the national park service. That influence has not touched Crater lake alone. Other concessioners in Rainier, Yosemite and other parks have had similar or worse doses of outrageous injustice than was inflicted on the concessioners at Crater lake. Enos Mills of Colorado is throwing some interesting side lights in the National Press on that gentleman's methods.

However, Oregon is interested primarily in Crater lake. The concessioners at Crater lake have given every visitor who wanted hotel accommodations up to 1913 more in the way of transportation, food and comfort than he had a right to expect for the money he paid under the conditions that existed. Ninety per cent of the guests concede this and many more have been unstinted in their praise of the place and not a few were outspoken in their denunciation of the attacks made by Mr. Mather. The few things that were a just cause for complaint can be remedied only by the expenditure of money, as they were matters of the physical condition of the plant and not defects of management. The problem to be solved at Crater lake is not one of management—Mr. Mather to the contrary notwithstanding—but is purely and simply a question of dollars. A metropolitan high-price hotel there will not only be out of place, but will be a financial failure.

In 1919 and 1920 the hotel accommodations at Crater lake were inadequate to meet the demands because of lack of facilities and will be still more so in 1921, yet nothing is being done to remedy the situation. Mr. Mather has tried for five years to interest capital in Crater lake and has succeeded only in proving to the satisfaction of all Oregonians that any man who would invest his money where it could be subject to confiscation or to the caprice of an erratic or unscrupulous government official would need a guardian. Nevertheless it is a groundhog case and something must be done. The tourist program of the entire west is being retarded by the lack of development at Crater

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lake. What should be done and how can it be done? First, get rid of Mr. Mather.

Falling this, see to it that the next secretary of the interior deprives him of the power to carry on a campaign of malice and destructive criticism that can do no possible good, yet does do great harm. This will clear the decks for action. Second: Form a corporation to take over existing interests and sell preferred stock to the business men of Oregon—the money thus raised to be spent for one purpose only—the creating of additional facilities for the accommodation of tourists in the park. Every business man in Oregon who has any interest in the future of Oregon ought to be glad of the chance to take at least one \$100 share.

Even if he never received a cent of direct returns, the enormous indirect returns to the state would more than pay each subscriber in his added individual prosperity. The tourist dollar is a new dollar and everybody gets a check at it in one way or another. But as a matter of fact it will pay dividends from the start. It is not developing a new field or a new industry. Crater lake is a going concern right now and will grow more rapidly in the next few years in proportion than either Rainier or Yosemite, because it is behind the normal and logical development and must and will catch up to its proper place in the procession.

Five hundred thousand dollars should be spent in developing the tourist accommodations at Crater lake, but it should be spent over a period of years and not in a lump sum or as Mr. Mather dictates. Not less than \$50,000 should be spent there in 1921. The experience of that season will determine the amount that should be spent in 1922 and what it should be spent for and so on each year, till the maximum development has been achieved. Then the government will spend \$100,000 a year or any other sum that is necessary to properly develop and maintain the park.

Oregon has no possession on which it can so well afford to spend development funds or one that it can so ill afford to neglect and not be done! ALFRED L. PARKHURST, President of Crater Lake Company.

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