

**THE PANAMA CANAL
CONTROVERSY: A LECTURE
DELIVERED
BEFORE THE UNIVERSITY OF
OXFORD ON OCTOBER 25, 1913**

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The Panama Canal Controversy: A Lecture Delivered Before the University of Oxford on
October 25, 1913 by Sir H. Erle Richards

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BY

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THE PANAMA CANAL CONTROVERSY

INTRODUCTORY.

THE near approach of the time when the Panama Canal is to be opened for public traffic has brought to a head the controversy between this country and the United States in regard to the tolls to be imposed on British Shipping which makes use of the new waterway. There are rumours that the President of the United States intends to propose the repeal or suspension of the clauses of the Canal Act to which Great Britain has taken exception : these rumours are as yet without confirmation, and in any case it is not possible to anticipate the judgement of the legislative bodies with whom the decision would rest. But whether such a proposal be made or not, there is certain to be much public discussion of the question in the next few months. It is one of grave importance, and it is one on which the public of this country should be in a position to form its own judgement. I have therefore thought it opportune to submit to the University to-day a statement of the points at issue between the two nations, and to express the opinion I have formed upon the materials which have so far been placed before the public. It is, of course, impossible within the time at our disposal to discuss, or even to mention, the whole of the numerous documents which are relevant to the inquiry and must necessarily be put in evidence before any tribunal which may be called upon to give judgement upon the matter. I can only attempt to refer you to

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the more important of them, and to present to you a summary of the more material facts. It is difficult in a public lecture to make clear to the audience questions which arise on the construction of written documents which cannot be conveniently placed before them, but I shall endeavour to avoid this difficulty to some extent by exhibiting the leading passages on the screen behind me as I proceed. The matter has been much discussed in the United States, and to a less extent in this country, and I cannot pretend to add anything new to what has been already said by others. I shall be content if I succeed in making clear to you the main contentions on either side, and the reasons which have led me to the conclusion to which I have come.

With this preface, I turn to the difference between the two countries as to these Panama tolls. Briefly it is this—the United States claim that they have the right to discriminate between their own vessels and those of this country, or, in other words, that they can remit tolls on American vessels without giving corresponding relief to British ships, or can charge lower tolls on their own vessels as compared with those imposed on the ships which fly the British flag. That is the full claim made by the Government of the United States, and the Panama Canal Act, passed by the American Legislature in 1912, empowers the President to give effect to that claim if, and when, he shall think right to do so. His Majesty's Government, on the other hand, contend that the United States have bound themselves by the Treaty between the two nations of 1901, generally known as the Hay-Pauncefote Treaty, to make no discrimination as against British vessels, and that the claim made by the United States and the powers conferred by the Canal Act are contrary to that Treaty in so far as they affect or may affect the shipping of this

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country. That is the main controversy, and the only controversy which we need consider for the moment. There is a subsidiary point as to whether the exemption from tolls of American coastwise shipping would be an infringement of the Treaty, even on the British construction, and upon that I will say a word or two at a later stage.

Turning, then, to the main controversy, we have to observe in the first place that the United States have now obtained sovereign control over the Canal—in the words of Sir E. Grey, they are the 'practical sovereigns' of it. It follows that, in the absence of any limitation of their sovereign power, they can impose tolls at such rates and with such exemption and discrimination as they please. The onus is on Great Britain to establish that these powers have been restricted, and this she seeks to do by reference to the Hay-Pauncefote Treaty of 1901.

The difference between the two countries turns, therefore, primarily on the construction of the Treaty of 1901, and I now invite your attention to it, and in the first instance to the preamble and to Article III, Rule 1, on which Great Britain relies. To the rest of the Treaty I will return at a later stage.

PREAMBLE.

His Majesty Edward the Seventh, . . . and the United States of America, being desirous to facilitate the construction of a ship-canal to connect the Atlantic and Pacific Oceans, by whatever route may be considered expedient, and to that end to remove any objection which may arise out of the Convention of the 19th April, 1850, commonly called the Clayton-Bulwer Treaty, to the construction of such canal under the auspices of the Government of the United States, without impairing the 'general principle' of neutralization established in Article VIII of that Convention.

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ARTICLE III.

The United States adopts, as the basis of the neutralization of such ship-canal, the following Rules, substantially as embodied in the Convention of Constantinople, signed the 28th October, 1888, for the free navigation of the Suez Canal, that is to say :

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

You will observe that Article III provides in express terms that the vessels of all nations observing the Rules embodied in the Treaty are to have the use of the Canal on equal terms and without discrimination. The words 'all nations' are not qualified in any way: there is no exception in regard to vessels of the United States. But the matter does not rest there. The preamble refers to a 'general principle of neutralization' established in an earlier Treaty of 1850, and Article III is intended to give effect to the principle so established: so that it is not possible to construe the Treaty of 1901 without taking into account the principle established in 1850, and reaffirmed in the later Treaty. It is necessary, therefore, for us first to go back to 1850 and to appreciate the state of things which led up to the agreement of that year, the position of the two parties to it, and the Canal projects which were then before the minds of the negotiators; and then to see what the intention of the two nations was in entering into that arrangement. These matters will be made the more clear if I recall to you, as briefly as may be, the history of the various

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Canal schemes, and refer you to a map which shows the material localities. You will find that the geographical position of the Canal throws some light on the construction of the Treaty.

HISTORY OF THE CANAL PROJECTS.

The advantages of some waterway for sea-going ships from the Atlantic to the Pacific has been recognized from the earliest times, indeed it is but necessary to glance at an atlas to realize the immense commercial importance of some direct connexion between the two oceans. Here is this great continent stretching across the face of the globe from North to South forming an impenetrable barrier to the traffic of the world as it goes from East to West or from West to East. There is no way round that barrier to the North, for there the relentless ice forbids the passage of shipping, and the only possible way for vessels to pass from one to the other side of the American continent has been the route which, by a *détour* sometimes double or more in length to the direct line across the Isthmus, but always substantially longer, circumnavigates the Southern extremities and takes its way round Cape Horn or through the Straits of Magellan. Europe has made for herself another outlet to the East: she has broken through the land barrier which separated the Mediterranean from the Eastern Seas, and can send her traffic to India, to China, to Japan, or to Australia by means of the Suez Canal. But that route cannot serve the Eastern ports of the American continent. Traffic from Oriental countries to those ports, whether to Montreal or New York, to New Orleans or the West Indies, or from them to the Orient, must travel by sea round the South of the continent, and that is still the only means of communication by ship between the Western and

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Eastern coasts of the British Dominion of Canada or of the United States. It is stated that between Great Britain and her colony of New Zealand the passage round Cape Horn is longer by more than 1,100 miles than the route across the Isthmus. I need not stop to give you further instances, the advantages to trade are obvious. It is no matter of surprise, therefore, that the project of a waterway connecting the Atlantic and Pacific Oceans has long been under the consideration of the world. As far back as 1550 the matter was brought to the attention of the Spanish Government, and proposals of various kinds have been made and discussed ever since. At that early time four routes were suggested, those of Darien, Tehuantepec, Nicaragua, and Panama—a fifth has since been added, that by way of the Atrato and Tupica Rivers in Colombia; and there may be others. The failure of the Darien Company, formed by William Paterson in 1695, is a matter of history: the same project was renewed at a later time, but only to fail again, and it need not further occupy us. Along the Tehuantepec route there is now a railway running: it was opened in 1907, and does a considerable trade: it will compete, and probably not unsuccessfully, with the Panama Canal for the traffic on certain lines, since it effects a considerable saving in mileage on such journeys as those from New York and New Orleans to Chinese and Japanese ports and to San Francisco. The Atrato project has come into notice within the past few weeks in connexion with an industrial concession granted by the Colombian Government. But it is the Nicaraguan and Panama routes which are alone material for our purpose to-day. That by the Panama has now been adopted, but I ask you to take note that throughout all the earlier negotiations between Great Britain and the United States, and indeed until 1901, the Nicaraguan