

Mr. WEATHERBE :—All you asked for was to substitute an oral for the written argument?

Mr. TRESCOT suggests that it would be better if he were now allowed to read the amendment which he proposes to submit

Mr. WEATHERBE :—It would have been better that we should have had it last evening.

Mr. TRESCOT :—It is entirely in accordance with the paper which I read last evening.

SIR ALEXANDER GALT :—We should have had the precise proposed alteration of the rule before us before hearing this argument.

Mr. TRESCOT :—It is precisely the same as what was laid before the Commission. I will read it. The third rule reads this way :—

“The evidence brought forward in support of the British case must be closed within a period of six weeks, after the case shall have been opened by the British counsel, unless a further time shall be allowed by the Commissioners on application. The evidence brought forward in support of the United States counter case must be closed within a similar period after the opening of the United States case in answer, unless a further time be allowed by the Commissioners on application. But as soon as the evidence in support of the British case is closed, that in support of the United States shall be commenced, and as soon as that is closed the evidence in reply shall be commenced. After which arguments shall be delivered on the part of the United States in writing within a period of ten days, unless a further time be allowed by the Commissioners on application, and arguments in closing on the British side shall be delivered in writing within a further period of ten days, unless a further time be allowed by the Commissioners on application. Then the case on either side shall be considered finally closed, unless the Commissioners shall direct further argument upon special points, the British Government having, in such case the right of general reply, and the Commissioners shall at once proceed to consider their award. The periods thus allowed for hearing the evidence shall be without counting any days of adjournment that may be ordered by the Commissioners.”

The amendment which we would move would be to insert after the words “the evidence in reply shall be commenced,” the following ;—

“When the whole evidence is concluded either side may, if desirous of doing so, address the Commission orally, the British Government having the right of reply.”

Mr. DOUTRE :—I understand this, but it is not the motion under discussion. I have read the principal part of that motion, and I say this, that, if we take this to mean what our friends had in their minds when they made their application, the only alteration that this rule would require would be this, “after which arguments shall be delivered on the part of the United States, orally or in writing, within a period of ten days, unless further time be allowed by the Commissioners on application and arguments in closing the British case shall be, etc.”

Mr. TRESCOT :—That is what Mr. Thomson proposes.

Mr. DOUTRE :—Exactly, and this does not give any more. But there was in their minds more than this contains. We have it in their verbal explanations.

Mr. TRESCOT :—So far as the construction of language goes, I have no objection to your putting any construction you please or drawing any inferences you choose from the language of the application that was made last night. But that the intention of that application and of the amendment we propose to-day were one and the same thing, there can be no doubt. When we filed that paper what was wanted was distinctly known, otherwise it would have been had faith on our part, as we would have been asking for one thing and intending to get another. There was no possible doubt what the object of this was, as is evident from the fact that Mr. Thomson suggested an amendment himself to counteract our object, showing that he had clearly in mind what object we had in view.

Mr. DOUTRE :—My answer is that by reading this we suspected the object of this paper was something more than to change the time when our learned friends should address the Commission. It only meant that instead of doing so before adducing their evidence they would do so after the whole of the evidence had been brought in. The object that our friends have in view is very clear in the paper which has been read here to-day by Mr. Trescott, but it is not so in the paper which was presented yesterday, and we suspected this was an indirect way of securing that which is not known in any court in the civilized world, namely, that the defendants should have the reply. They would have twice the opportunity of discussing the matter, when they have no right to be heard more than once. Now, why is the reply given to the plaintiffs? Because up to that moment the position of the defendants is far more privileged. They have all the evidence of the plaintiffs in their hands, and they know what they are themselves going to prove. The plaintiff does not know it. When we shall have closed our evidence, they will have the whole case in their hands, whilst we have only half of it. For that and other reasons the final reply is given to the plaintiff, and we object to our friends in this manner seeking to upset the rules which prevail in all courts of justice that ever existed.

Mr. DANA :—I beg that you will not sit down without explaining how you lose the reply.

Mr. DOUTRE :—We have a reply which is worth nothing. That is what I mean. The virtual and practical reply is in your hands. That is exactly the position.

I think it is necessary in order to preserve the harmony that has so far existed here we should not introduce in this Commission a practice which has never existed in any court, that one of the counsel should pass over the head of his legal adversary in order to reach the suitor and ask him if he agrees to what his counsel proposes. Such a course as that would tend materially to impair the good relations which we all, I think, desire to cultivate.

Mr. TRESCOT :—

I have no intention of saying one word that could disturb the relations that exist between the counsel on either side, and I have no fear that anything could be said on either side that would have such a result. For that reason I don't object, as I perhaps might, to the application which I made yesterday being characterized as a masked request. When I read that document yesterday I had no earthly doubt that every man present knew what I wanted. So far from having any doubt about the matter, I may say that both the Hon. Minister of Marine, who appears to be of counsel with the other side, and the Agent of the British Government, distinctly informed us that they would consent to this petition if we may call it such, provided we would take the proposition submitted by Mr. Thompson. Now there can be no doubt that when that proposal was made they understood what it was wanted. We stated as distinctly that we declined to accept any such proposition, and that the course they pursued was one that could not meet our approval. All I am anxious to do now is to clear myself of the accusation, for such I think it is, of having submitted a paper which asked for one thing when I wanted the Commission to do another thing.

SIR ALEXANDER GALT :—

I do not think the Commission ever attributed such a design to you

Mr. WEATHERBE :—

Will you read the part of the paper presented yesterday which says what you wanted the Commission to do.

Mr. TRESCOT :—

It is as follows : “As we understand the wish of both Governments to be,” etc.