

oral and written arguments made against us after our mouths are closed for ever; but I cannot understand it now. If the matter should be left as they desire to have it left, I venture to predict that either on our application, or more likely at your own request, we shall be called upon to reargue this case after the original arguments are supposed to be closed, for you will find in their final arguments, oral and written, matters which you will think common justice and fair-play, for which Englishmen are said to be distinguished all the world over, require that we should have an opportunity to answer. They may close upon us orally, they may close upon us in writing, but as for their possessing the privilege of keeping their policy concealed till the last moment, I do not believe they really want it; I do not believe my friend the British agent wants it; and if he does not want it, there is no conceivable objection to the adoption of the course we propose.

MR. DOUTRE:—May it please your Excellency and your Honors,—My learned friend Mr. Dana has spoken of the usages of the courts in different countries, and with those observations we might have agreed until he came to claim a most extraordinary thing, and one which I am sure our learned and experienced adversaries never heard of being conceded in any country in the world—that the defendant should have the reply. My conviction is, that there is no danger in challenging our friends to name any court in the world where the defendant has the right to reply. I think we would be far below the standard given to us in the compliments of our learned friends if we did not see very clearly the course which they propose to follow. They would have the means of meeting everything we could state; and anything we might state after that, I don't conceive what it could amount to. It may strike persons not familiar with courts of justice that it is strange we should insist on having the last words, and our friends magnify that extraordinary desire on our part to point out that we have not to deal here with a jury, which might be misled by the elegance of some skilful lawyer, but that we have to deal with a far higher order of judges. This I admit. But I would like my learned friends to explain the strenuous efforts they are making to get that reply. It is nothing but such a demand that my learned friends are putting forward. Our American friends have been so extraordinarily lucky in all their international difficulties that they have arrived at the last degree of daring. We are living in hope that sometime or other the balance in connection with international difficulties between England and the United States will turn on the right side. I do not know if we are in the way of reaching such fortunate result, but we live in that hope. Our learned friends on the other side pretend that they have been placed at a disadvantage, from the fact that we did not, as they say, open our case. We did open our case. We opened through Mr. Thomson, who stated to the Commission that all he had to say was printed, cut and dried, and ready to be read; that it set out the case in better language than he could have used in a speech, and that there was nothing to add to or take from it. I think this was the best opening that could have been made; otherwise, our learned friends might have complained and said they expected to have obtained more detailed information about the case. But they felt it was a saving of time, and they have expressed the opinion to-day that it would have served no real interest to have gone any further than Mr. Thomson proceeded. Mr. Dana has complained that the brief which has been filed by the American agent has not yet received an answer. I think we are not bound to answer the brief. If we do so, it will be merely out of courtesy to our friends. Our answer might come in our final written argument, and there is no reason whatever, and no right on the part of the counsel of the United States, to demand to have it sooner than that. If we choose not to answer it even then, I question if we can be required to answer it; so that if we give an answer to their brief it will be a mere matter of courtesy, because we are not bound to do so.

MR. DANA:—Do we understand there is to be no answer?

MR. DOUTRE:—I do not say so. While I think we will file an answer, it will be done out of courtesy to the counsel for the United States. We have been told we are keeping masked batteries for the last moment. I would like to know where we would find ammunition to serve those batteries. Is not all our case in the documents filed, in the depositions of the witnesses and in the affidavits? Can we bring anything more to bear? These are our ammunition; they are all here, our hands are empty, and we have no more to serve any masked batteries. The argument may be very plausible, that in a large question involving two great countries, it is necessary that everything should be done which tends to enlighten the minds of the judges so that a just result may be secured; but that argument, Your Honors will understand, would be as good in every court in the world to obtain for the defendant the last words and change all the rules of judicial tribunals. Hon. Mr. Foster says he has been induced to agree to the demand now under discussion because when he saw he was going to be met, contrary to the expectation of his Government, by five gentlemen, whose talents he magnifies for the occasion because it suits the purpose he has in view, he thought he would be under a disadvantage if the rule in question should be maintained. If we go back to the time when the rule was adopted it will be recollected that the five lawyers on behalf of the British case were then before the Commission. If they were not admitted, it was known for several weeks that the British agent intended to be assisted by counsel; so the fact was fully before every one of us when the rules were adopted. Now we are asked to change these rules. So long as it is a matter of convenience and pure courtesy to the United States we have no difficulty in acceding to their request, and in doing this we are acting within the terms of the written document under discussion, which says:—

"As we understand the wish of both Governments to be that the whole discussion should be as frank and full as possible, it has occurred to us that you might be disposed to allow us to adopt such an arrangement as would, in our judgment, best enable us to lay before you a complete presentation of the opinions of the Government we represent, and we feel more assured in that opinion as this privilege deprives counsel on the other side of no advantage which they now possess, for besides the right to reply to the printed argument, which they now have, we would, of course, expect that they would also be allowed the right of oral reply if they desired to exercise it."

So far this is perfectly correct, but it does not show their hands to us at all. We do not see their real object, for there is a masked battery. Apparently a very simple alteration of the rule is asked for, and our friend Mr. Trescot thought yesterday that it was so unobjectionable that it would be immediately acceded to. Well, if this paper had stated the whole truth, and did not cover anything which is not mentioned, we should have accepted it immediately, as has been already stated by my brother counsel. But we suspected that this slight alteration concealed something, and we were not mistaken.

MR. TRESCOT:—What is it?

MR. DOUTRE:—I will explain it, certainly. Mr. Dana says, "You have a reply." Certainly we have the reply, but we might reply in eight months from this, and it would be just as good. Here is the practical result—If the proposition, which is not included in this paper, but which has been admitted verbally, were accepted, our learned friends would develop their case orally, and we would answer orally. They would then come with their printed statement. Now, is not this the reply? What would remain for us to say? What would be the value of that printed document which we could give afterwards? What new aspect or *expose* of our case could it contain? None whatever; so that virtually it gives our friends the reply, and that is the reason why they are insisting so strongly upon the change in the rule.

MR. DANA:—You take the objection that under our proposed rule you would not be able to put in anything new?