

Government for having confined the trans-shipment of grain to Canadian ports. The Government, in an Order-in-Council of date June 17th, 1892, states the object of the rebate system to be "the encouragement of ocean shipping *via* the St. Lawrence," and continues:—

"It is alleged that the Canadian rule creates discrimination between the two nationalities, on the ground that permission is given to vessels of both nationalities to trans-ship cargoes destined to Montreal at an intermediate Canadian port, without forfeiting the claim to rebate, while vessels of neither nationality can receive rebate if their cargoes are trans-shipped at an American port. Strictly speaking, this creates no inequality in the use of the canals, though it undoubtedly does discriminate against the United States ports as points of trans-shipment. The United States vessel may obtain its rebate precisely as a Canadian vessel can, by trans-shipping its cargo, (if trans-shipment is necessary) at a Canadian port. And, on the other hand, neither Canadian nor United States vessels can obtain a rebate if they trans-ship at a United States port.

A discrimination is here admitted, as between points of trans-shipment, and I am bound to say the Canadian case would be infinitely stronger, indeed impregnable, but for this lapse. It is the one and only point in which Americans can be said not to stand upon terms of equality with Canadians, and clearly the Canadian rule is directly opposed to the avowed purpose of the rebate system, namely the encouragement of ocean shipping *via* the St. Lawrence. There is some reason for believing that the resort to retaliation by the United States was prompted by the refusal of the Canadian Government to extend the rebate to grain trans-shipped at Ogdensburg, and it certainly does seem somewhat anomalous that a policy adopted professedly to encourage an export trade by way of the St. Lawrence should be burked by a regulation requiring trans-shipment on the Canadian side. In every other respect the American carrier may comply with

the conditions of the Canadian Order-in-Council; he may transport the grain down the whole length of the Welland and St. Lawrence canals to Montreal, and export it thence to Europe, but if the intermediate trans-shipment has occurred at Ogdensburg, instead of at Kingston, the rebate is refused. Such a policy might almost be regarded as injurious, instead of helpful to the growth of ocean shipping *via* the St. Lawrence. Summing up this aspect of the question, therefore, the conclusion is reached that while no treaty compact has been violated by Canada, nor the letter of the engagement broken, the spirit of the agreement has been transgressed in the withholding of the rebate from grain trans-shipped at an American point on its way to the ocean vessel.

There was, however, an obligation also placed upon the government of the United States, by Article 27, namely to urge on the State Governments to secure to British subjects the use of the State canals on terms of equality with the inhabitants of the United States. A reading of Article 27 shows that only one absolute engagement was made—that Canadians should have equality of treatment in the St. Clair Flats canal: the Canadian canals on the one side, and the State canals on the other, were to be thrown open contingently only upon the proprietary governments deeming fit to open them. A failure on the part of either Canada, or of the States of New York and Michigan, to open their canals to citizens of the other country would not, and does not, constitute any infraction of the treaty clause, although it might, of course, lead to reprisals founded upon a conviction of bad faith. Now, the charge has commonly been brought against the Federal Government of the United States that it did not urge the State Governments to open their canals to Canadians,