friend exactly, but as I understand him, he claims the right of two replies: that is the right to reply to our oral argument, and then the right to reply to the printed argument, to which we have no objection.

MR. THOMSON:—I said we would reply to your two arguments, oral and written.

MR. TRESCOT:—If you mean that we are to make an oral argument, and that if you do not want to make an oral argument you shall not be obliged to do so, I have no objection.

MR. THOMSON:—I suppose that we will exercise our pleasure regarding that matter.

MR. TRESCOT:—If we make an oral argument, they have the right to reply. If, then, we give a printed argument they have the same right to file a printed argument in reply—their relation to us in the case is preserved throughout. My friend refers to the character of the case, and taking into consideration not only the character of case, but of the parties, of the court before which we are, I may even venture to say of the counsel engaged, I do not think we ought to proceed in the spirit of a Nisi Prius trial. Your judgment certainly cannot be prejudiced by a full and frank discussion. Our purpose is to save time and labour. We propose orally to discuss this subject before you with a frankness and freedom that we cannot do in writing, and then to put in a printed summary, giving counsel on the other side the right to put in the final one. Surely my friend does not want us to adopt his suggestion because he wants to say something at the last moment to which we will not have opportunity to reply. There cannot be anything of a mystery in an argument like this. We all now understand what are the issues which are before us. We only want to discuss them with perfect frankness and fullness, so that everything that is to be said on the case may be said. I want this case to be so argued, both in spirit and fact, that whatever the award may be, and whoever is called upon to submit to an adverse decision, they will be satisfied, having obtained the fullest possible hearing on the subject. I want to secure no advantage over my friends on the other side, and I do not believe that they desire to have any advantage over us; if they will allow me to borrow an illustration from the language of their witness, we do not wish to "lee-bow" them. But I think that my learned friend is sacrificing himself to a sort of technical superstition for the word "reply." In this case there is nothing mysterious, and no necessity exists in regard to having the last word. We are willing to lay our whole argument before the Commission, and then to let them reply to it, if they so wish, but if they do not choose to do it we do not intend to compel them to reply; and it is perfectly in their power to effect themselves what they propose, by declining to reply to our oral argument and confining themselves to their final argument. I say frankly I would regret such a decision very much. We wish to know their case as they regard it, and without depriving them at all of their right to reply to have a frank, full, straightforward and manly discussion of the whole question. I have always thought that the fairest manner for submitting a case is followed before our Supreme Court. Both parties put in their printed arguments, bringing them within the common knowledge of each party before the Court, and then they are allowed to comment on these arguments as they please.

MR. THOMSON:—

I agree with Mr. Trescot that this cause has not to be tried as one at Nisi Prius; we do not want Nisi Prius rules here, but we want the broad principle understood that Great Britain in this case is the plaintiff, and as such she is first to be heard, and last to be heard. A great advantage is obtained by the United States by hearing our case first, and for this very simple reason, during the whole time our evidence is being given before this Court they can be preparing their witnesses to meet it.

There is always this advantage given to the defendant in every case. He has the privilege of hearing the plaintiff's testimony, and during the time the testimony is being given, he has the opportunity of preparing his answer. On the other hand when the plaintiff comes to close the case, if there be an advantage in having the last word, the plaintiff has it. So the advantages are about balanced. A "frank" discussion under the proposition submitted by the counsel for United States simply means that the United States would get entirely the advantage in [redacted] cause. There is not the slightest desire on the part of the British Government or on the part of the Canadian Government represented here by the Minister of Marine, that one single fact should be kept back or forced out as against the United States, on the contrary that they shall have the fullest opportunity of being heard, but we submit that not only the rules solemnly adopted by this Tribunal, but the rules which govern the trial of ordinary causes should not be departed from. We have given way a great deal, when we are willing to allow our learned friends who represent the United States, to take the course they propose to this extent: that they shall make their oral speeches if they choose to do so, and if they choose, in addition, to put in a written argument, well and good, but they must do it at once, and that, if we please we shall answer their written argument and speeches orally and by written argument, or by one of those modes only. We ought not to be asked to yield more.

MR. DANA:—

Your Excellency and your Honors: From all the experience I have had in the trial of causes, where there has been examination of witnesses, it appears to me to be the best course, to argue the facts of the case after the facts have been put in. Such is the practice in the United States, and I presume in Canada. This seems a simple proposition: that the time to argue upon the facts to affect the minds of those who have to judge and determine, should be when it is fully ascertained what all the evidence is, and it is always dangerous, often inconvenient and always illogical, to argue upon supposed, assumed, suppositious, hypothetical testimony which may never come before the Court.

I suppose your Excellency and your Honors understand my objection. It is to a rule which permits that when the plaintiff has put in all his evidence, and the witnesses have been cross-examined, the defendant's counsel may rise and state what he is instructed will be the testimony, what he supposes or assumes will be the testimony on his side, and then to make an argument upon that testimony assumed and hypothetical as it is, and to contrast it with the testimony of the plaintiff, and deliver his mind fully and finally on the subject. This is dangerous and utterly unsatisfactory. Consequently in the United States, and I presume in the Dominion, the argument is made after it is known what the testimony is, because the plaintiff's counsel in an ordinary cause, or the counsel representing the Government here, may rise with full belief that it will be in his power to place the case in a certain position by his testimony, but it may turn out that he will be disappointed in his testimony, that the witnesses have not said all he expected, and that the cross-examination reduced or altered the testimony. But there is another reason. When the defendant has put in his entire case there is the right of rebuttal possessed by the plaintiff, and the rebutting testimony may produce effects which the defendant's counsel had no reason to anticipate, and which, without directly contradicting his testimony, may place it in a new light. So I think every person will see, and I am quite sure this tribunal will see, it would be wasting time for us to attempt to impress by argument, comparison and illustration, the effect of testimony which has not been put in. Now, when we speak of opening the case for the plaintiff or defendant we do not mean arguing the case. On the contrary, an argument is not allowed by our practice in opening a case. All you can ever do in opening a case is to state very generally what kind of testimony you expect to produce, what you think will be the effect of it, and the positions of law to which that evidence is to be applied—mere signals of what is expected to be done. If in opening a case, counsel attempts to say anything about the evidence put in on the other side, and argue on the character or effect of his own testimony, he is stopped, because he is arguing.