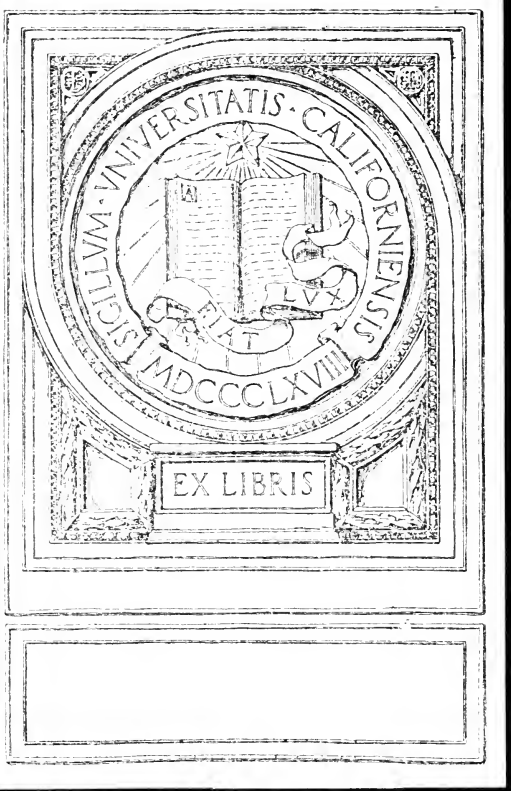
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INTRODUCTION.

Our letters to the Providence *Journal*, on the subject of *Indirect damages*, founded on the provision for the Alabama claims, generically so called, under the treaty of Washington, of May 8th, 1871, sufficiently explain the motives which induced their preparation. It was intended, in consequence of numerous requests for copies of these papers, to reprint them in pamphlet form. But, though they were put in type immediately after their appearance in the *Journal*, other engagements have hitherto prevented the revision of the proof sheets. In the meantime, the subject has happily lost the interest incident to a controversy pending between two great nations, the influence of which was daily felt in the fluctuations of the Stock Exchange. The indirect claims, however, must ever constitute an interesting episode in diplomatic history, whether we regard the unadvised presentation of them by the United States, the course adopted in relation to them by England, the protracted negotiations between the two governments to devise a mode for their abandonment, or whether we take into view the intervention of the arbitrators, who, availing themselves of a motion of adjournment, in anticipation of any regular judgment, and without deciding the question of their own jurisdiction, removed these claims from the records of the tribunal.

We give, having received the last publications of the two governments, including the recent proceedings of the Arbitrators at Geneva, a rapid synopsis of what occurred subsequent to the date of our communications to the *Journal*.

It has been deemed expedient to precede the claims for *indirect losses*, by a letter, which was originally prepared for the New York *World*, while the treaty itself was still before the Senate. It was also published in the *Journal*. This letter will not only show that our views on the nature and object of the convention, formed before a discussion respecting its meaning had arisen, were the same as we have ever since maintained, but it will serve to elucidate the points in controversy.

The "American case," which contained the exceptionable matter, was presented to the Arbitrators at Geneva, on the 15th of December last. Though to a telegraphic intimation from General Schenck, of the 2d of February, Mr. Fish had replied that, "there must be no withdrawal of any part of the claims presented;" it is in a note from Lord Granville to General Schenck, of the 3d of that month, that we find the first reference made to the indirect claims in diplomatic correspondence. It is there said:

"Her Majesty's Government hold that it is not within the province of the Tribunal of Arbitration at Geneva to decide upon the claims for indirect losses and injuries, put forward in the "case" of the United States, including the loss in the transfer of the American commercial marine to the British flag, the enhanced payments of insurance, and the prolongation of the war, and the addition of a large sum to the cost of the war and the suppression of the rebellion."

On the opening of Parliament on the 6th of February, the Queen, in announcing that the first meeting of the Arbitrators had taken place at Geneva, declared that in the American case, there were large claims which, in her opinion, were not within the jurisdiction of the Arbitrators, and that she had caused a friendly representation to that effect to be made to the government of the United States.

Mr. Fish, in his note of February 27, 1872, to General Schenck, says, in regard to the claims referred to by Lord Granville, "the President is of opinion that he could not abandon them except after a fair decision by an impartial arbitration." He thus proceeds:

"It is within your personal knowledge that this government has never expected or desired any unreasonable pecuniary compensation on their account, and has never entertained the visionary thought of such an extravagant measure of damages as finds expression in the excited language of the British Press, and seems most unaccountably to have taken possession of the minds of some even of the statesmen of Great Britain."

A note of Earl Granville to General Schenck, of March 20, 1872, with the memorandum inclosed, goes into an extended examination of the origin of the claims for indirect losses, and of the protocol and treaty. This was answered at much length by Mr. Fish, April 16, 1872, in an instruction to General Schenck, which concluded by declaring that "the extent and the measure of liability and damages under the treaty is a matter for the supreme determination of the tribunal established thereby."

A dispatch from Sir Edward Thornton to Lord Granville, April 30, 1872, thus refers to a conversation with the American Secretary of State.

"Mr. Fish read me a part of the despatch which he had sent to General Schenck, on the 19th instant, and in which Mr. Fish expressed his surprise that Her Majesty's Government should object so much to a decision by the Tribunal of Arbitration at Geneva, on the matter of the indirect claims; for that it must be aware that the United States Government neither expected nor desired a money award on account of these claims, and that the United States were quite as much interested as Great Britain in obtaining from the tribunal a decision adverse to these claims. Mr. Fish told me that Mr. Adams left New York for England on the 24th instant, and that on his arrival there he

would convince your Lordship, though unofficially, that he was entirely opposed to the principle of claims for consequential damages." He added: "But, during the whole conversation, Mr Fish betrayed anxiety that the treaty should not be allowed to break down, and frequently expressed his hope that your Lordship would suggest some means of disposing of the indirect claims, which would at the same time satisfy Her Majesty's Government and would be possible for that of the United States; for he said that, even if the latter was not justified in ever having presented those claims,—which he could not admit,—it was impossible for it now to recede or withdraw them, unless it should obtain a *quid pro quo*.

"If Her Majesty's Government were really anxious that the provisions of the treaty should be carried out, which, I earnestly assured him was certainly the case, why, he asked, should not your Lordship, in your answer to his despatch, now on its way, state that, as the United States Government had made it evident that it did not desire a money award on account of the indirect claims, but merely a decision on their merits by the Tribunal, Her Majesty's Government would consent never to present such indirect claims, under similar circumstances, when England might happen to be a belligerent, and would allow the abstract question to be decided for the benefit of both parties, if the United States Government would engage not to ask for a money award on the indirect claims, from the Tribunal at Geneva."

The attempt thus initiated by Mr. Fish to cause the objectionable claims of the United States to disappear, without the government seeming to withdraw them, resulted, after various discussions between Lord Granville and General Schenck, in the draft, by the former, at our request, of a supplementary article to the treaty. As laid before Parliament, May 10, 1872, it was in the following terms: "Whereas the Government of Her Britanic Majesty has contended in the recent correspondence with the Government of the United States, as follows, namely: That such indirect claims as those for the national losses stated in the case, presented on the part of the Government of the United States to the Tribunal of Arbitration at Geneva, to have been sustained by the loss in the transfer of the American commercial marine to the British flag; the enhanced payments of insurance; the prolongation of the war; and the addition of a large sum to the cost of the war, and the suppression of the rebellion; firstly, were not included in fact in the treaty of Washington; and further, and secondly, should not be admitted in principle as growing out of the acts committed by particular vessels alleged to have been enabled to commit depredations on the shipping of a belligerent by reason of such a want of due diligence in the performance of neutral obligations as that which is imputed by the United States to Great Britain.

"And, whereas, the Government of her Britanic Majesty has also declared that the principle involved in the second of the contentions, herein before set forth, will guide their conduct in future. And, whereas, the President of the United States, while adhering to his contention that the said claims were included in the treaty, adopts for the future the principle contained in the second of the said contentions, so far as to declare that it will hereafter guide the conduct of the Government of the United States, and the two countries are therefore agreed in this respect.

"In consideration thereof the President of the United States, by and with the advice of the Senate thereof, consents that he will make no claim on the part of the United States in respect of indirect losses as aforesaid before the Tribunal of Arbitration at Geneva."

The proposed article was so far adopted by our Government, as to be submitted to the Senate of the United States. That body, however, amended it by substituting two paragraphs, as follows: "And, whereas, the Government of the United States has contended that the said claims were included in the treaty;

"And whereas both Governments adopt for the future the principle, that claims for remote or indirect losses should not be admitted as the result of the failure to observe neutral obligations, so far as to declare that it will hereafter guide the conduct of both governments in their relations with each other.

"Now, therefore, etc."

The alterations were not acceptable in London and several changes of phraseology were suggested, but the British government was given to understand that, owing to the near approach of the adjournment of Congress, it would be impossible to make any other supplementary treaty if the one assented to by the Senate was refused.

Lord Granville then proposed in an instruction to Sir E. Thornton, of May 31st, 1872, a convention adjourning the period for the presentation of the arguments under the 5th article of the treaty, in order to afford time to arrive at an agreement on this subject. As the Senate would not be regularly together until December, a period of eight months was named by Lord Granville in a note to General Schenck, of June 8, 1872. This last note inclosed the draft of a note to the Arbitrators in which the agent, after stating the delivery of the points on which the British Government relied, thus proceeds:

"The undersigned is instructed by the government which he represents to state that this printed argument is only delivered to the Tribunal conditionally on the adjournment requested in the note, which he had the honour to address to the Tribunal this day jointly with the Agent of the United States, being carried into effect, and subject to the notice which the undersigned has the honour hereby to give that it is the intention of Her Majesty's Government to cancel the appointment of the British Arbitrator, and to withdraw from the arbitration at the close of the term fixed for the adjournment, unless the difference which has arisen between the two governments as to claims for indirect losses referred to in the note which the undersigned had the honour to address to Count Sclopis on the 15th of April shall have been removed."

It had been deemed impossible to obtain the action of the Senate on a treaty of adjournment, nor was the American Secretary willing to unite with England in an application to the Arbitrators to adjourn by their own authority the meetings of the Board, till an understanding could be arrived at.

That the supplemental treaty, if made, would only have inaugurated new questions is apparent from the note of Lord Granville, dated 27th May, 1872, to General Schenck, in which he declines saying whether the Article as

amended by the Senate, would or would not exclude the claims for national expenditures in pursuit of the confederate cruisers.

He adds, "Her Majesty's Government are of opinion that the definition, as therein expressed, of the principle which both governments are prepared to adopt for the future, is so vague that it is impossible to state to what it is or is not applicable, and they believe that it would only lead to future misunderstandings."

In his note of 20th March 1872, Lord Granville thus alludes to those claims:

"Nor did Her Majesty's Government object to the introduction of claims for the expense of the pursuit and capture of the Alabama and other vessels, notwithstanding the doubt how far those claims, though mentioned during the conferences as direct claims, came within the proper scope of the arbitration."

This is quoted by General Schenck in his note to Earl Granville, May 28th, 1872, in reply to the refusal of the latter to say whether they would be excluded by the supplemental article proposed by the Senate,—He adds:—

"The Government of the United States is of opinion that the language of the Senate cannot be interpreted to exclude those claims; but I am now instructed to say that the Article, in whatever form adopted, as to the proceedings before the Arbitrators at Geneva, must be understood to prevent only the presentation of the claims enumerated in the second contention of Her Majesty's Government."*

The great problem how to get the indirect claims out of the case which both parties ardently desired, and which months passed in negotiations, at London and Washington, had failed to accomplish, was finally solved by the action of the Arbitrators. Availing themselves of the motion of the English agent for an adjournment, they incidentally pronounced, on the 19th of June, an opinion on the merits of the claims, which, the parties assumed, left no excuse for their longer embarrassing the operations of the Tribunal.

The President, Count Sclopis, premising that the application for adjournment was before the Arbitrators, and that it was based on the difference between the two Governments, as to the competency of the tribunal to deal with certain claims advanced in the case of the United States, which he enumerated, proceeds:—"The Arbitrators do not propose to express or imply any opinion upon the point thus in difference between the two governments, as

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*Our views, on the inexpediency of explanatory treaties are greatly strengthened by what is said in the (London) *Solicitors' Journal*, of May 11, 1872, in a notice which precedes an extract from our letter of April 20, 1872. "Public opinion seems now as decided in America as on this side of the Atlantic that the 'Indirect Claims' ought not to have formed any part of the American case, and yet up to this time that part of the case totally blocks the progress of the arbitration. A proposal was made on the part of the government of the United States to lift the arbitration over the obstacle presented by these lifeless but obstructive claims, by an arrangement that these claims should not be formally withdrawn, but that the arbitration should be proceeded with as though they were withdrawn, an agreement being made at the same time, between the two Powers that Great Britain will never make similar claims on any future occasion, when we may have been belligerent and the United States neutral. Such an arrangement as this is open to all the disadvantages of an "understanding" which, as every lawyer knows, is the fruitful parent of misunderstandings; while the stipulation that Great Britian is not to make indirect claims in the future is absurdly supererogatory."

to the interpretation or effect of the treaty. But it seems to them obvious that the substantial object of the adjournment must be to give the two governments an opportunity of determining whether the claims in question shall, or shall not, be submitted to the decision of the Arbitrators and that any difference between the two governments on this point may make the adjournment unproductive of any useful effect, and after a delay of many months, during which both nations may be kept in a state of painful suspense, may end in a result, which, it is to be presumed, both governments would equally deplore, that of making this Arbitration wholly abortive. This being so, the Arbitrators think it right to state that, *after the most careful perusal of all that has been urged on the part of the government of the United States, in respect of these claims, they have arrived, individually and collectively, at the conclusion that these claims do not constitute upon the principles of international law applicable to such cases, good foundation for an award of compensation or computation of damages between nations, and should upon such principles be wholly excluded from the consideration of the Tribunal in making its award, even if there were no disagreement between the two governments as to the competency of the Tribunal to decide thereon.*"

On the same day, the counsel of the United States informed their agent that in their opinion, the announcement made by the Tribunal must be received by the United States as determinative of its judgment upon the question of public law involved, upon which the United States have insisted upon taking the opinion of the Tribunal.

The declaration of the Tribunal was stated by the Agents, after reference to their respective governments, to be satisfactory to both of them. The following entry was accordingly made in the protocol of the 27th of June, 1872.

"Mr. Bancroft Davis said that he made no objection to the granting of the request made by Lord Tenterden, to be permitted to withdraw his application for an adjournment, and to file the argument of Her Britanic Majesty's Government. Count Sclopis, on behalf of all the Arbitrators, then declared that the said several claims for indirect losses, mentioned in the statement made by the Agent of the United States on the 25th instant, and referred to in the statement just made by the Agent of Her Britanic Majesty, are, and from henceforth will be, wholly excluded from the consideration of the Tribunal; and directed the Secretary to embody this declaration in the Protocol of this day's proceedings."

Thus ended this diplomatic episode. The American journals, which favored the Administration, deemed it a great triumph that we had secured a judgment against ourselves; while the Queen, in her prorogation speech, 10th of August, rejoices to inform Parliament that the controversy, in consequence of the presentation of the American claims for indirect damages, has been composed by a spontaneous declaration of the Arbitrators, entirely consistent with the views announced by her at the opening of the session.

The different understanding of the two governments on a matter so essential to the object of the treaty as the extent of the claims to be adjusted would seem inexplicable, were it not for the fact that, though using the same language, scarce any conventional arrangement has been made between the

United States and England, in the interpretation of which the parties agreed. In the present case, something may be imputed to the fact, which we learn from the Parliamentary Debates, that no part of the treaty, except the "three rules," had been submitted, as is usual in such cases, to the law officers of the Crown.

Though the indirect claims were not stated in so many words to be withdrawn, they were merged, as we have elsewhere had occasion to remark, "in the amicable settlement" effected by the treaty. That such has been the declaration of the British Commissioners is admitted, as to four of them in the American argument — by the Marquis of Ripon and Sir Stafford Northcote in their places in Parliament, and by Sir E. Thornton and Mr. Bernard on public occasions sought by themselves. Sir John A. Macdonald confines himself, in his speech of 3d of May 1872, before the Dominion Parliament, to the articles regarding Canada, but we know from that Minister himself, in personal intercourse, that he, in no wise, differs from his colleagues as to the Alabama Claims. Nor do we understand that any thing, in a contrary sense, was expressed at any meeting of the Plenipotentiaries by our Secretary of State, as the organ of the American Commissioners: while our Envoy in England, himself a Commissioner, listened to the statements of Ministers in both houses of Parliament, in which the fact of the abandonment of the indirect claims was assumed, without, in his subsequent interviews with Lord Granville, giving any intimation of the mistake of the British government, if any existed. Our present Attorney General, who was likewise a Plenipotentiary, and who, in such cases as the construction of a treaty would, under ordinary circumstances, be appealed to as the law officer of the government, has given no opinion. Nor have the views of the "American case" received any sanction from the venerable Justice Nelson, or, as far as the public are apprised, from the remaining member of the Commission, on the part of the United States, the late Attorney General Hoar.

We have, as we were preparing this introduction, received the British and American arguments, laid before the Geneva Tribunal in June last. The chapter in the American argument relative to Indirect claims, as separately published, had previously reached us.

The action of the Tribunal, in removing these claims wholly from its consideration, confines the last paper to an exclusively historical interest. It is strenuously urged, despite of the discussions that had been going on for upwards of four months and the concessions made by Mr. Fish, that the fact that the indirect claims were not waived by the American commissioners, ought to have been known to their British colleagues, or rather that no reason existed for the interpretation given by them to the treaty in that respect. It is maintained that there is no distinction between the direct and indirect claims and that the latter are "by the express terms, the spirit as well as the language of the treaty referred to the Tribunal." The argument draws a distincton between the claims previously asserted by our government, founded on the premature recognition of belligerency, and which it admits were abandoned by President Grant, and those which, it is maintained, resulted from the escape of the Confederate cruisers.

It is denied that to pay the price of certain ships destroyed is due reparation. Considerations of international obligations forbid the counsel of the United States to press for extreme damages, on account of the national injuries suffered by the nation itself, through the negligence of Great Britain, but they desire the judgment of the Tribunal on this particular question for their own guidance in their future relations with Great Britain.

All the counsel not only indorse, but reiterate the statements so offensive to England, assumed to have been written by Mr. Bancroft Davis, in the original case, thereby absolving that gentleman from exclusive responsibility for them. Not only are the motives of Great Britain, as evinced in the speeches of individual Ministers and the acts of the government, (including the premature recognition of Confederate belligerency though abandoned as a basis of claims,) referred to as explaining her course with respect to the Alabama and the other rebel cruisers, but the counsel go back to a period anterior to the colonization of these States to show, by the piratical enterprises of Drake and Hawkins, why up to 1819 England had no neutrality law.

The subject of indirect claims is not touched on in the British argument, but it repeats: "The claims for money alleged to have been expended in endeavoring to capture or destroy any Confederate crusier are not admissible together with the claims for losses inflicted by such cruiser."

The exaggerated character of these claims is examined in connection with a further report of the British Admiralty, and it is attempted to be shown that to the inefficiency of the proceedings of the American navy, rather than to any disregard by England of her neutral obligations was the prolonged career of the Confederate crusiers to be attributed.

It appears from the "cases" and "argument" filed, on the part of England, that the *indirect* claims, the withdrawal of which was insisted on, as a *sine qua non* to the continued existence of the Tribunal, were not the only ones, which were deemed by the British government, not to be within the submission. While they allowed claims for expenditures incurred in the pursuit of cruisers, whose depredations were included in the generic term of Alabama claims, to go before the Tribunal, they insisted that all claims must be confined to the acts of those cruisers, viz: the Florida, the Alabama, the Georgia and the Shenandoah. The American argument admits that these vessels were the only ones "which left Great Britain to receive their armament, and which afterwards without having been engaged in any other service, actually armed for war," though in accordance, as we conceive, with the same unwise policy that induced the presentation of the *indirect* claims, the "case" and "counter-case" included claims for acts committed by all other confederate cruisers, several of which are no further indicated to the British government than as having been enumerated in one of the volumes of "Claims of the United States against Great Britain," which the counter-case says, "it is believed, were in the Library of the foreign office, before the High Commissioners received their instructions." In the "argument" however, there are only five vessels, not recognized by England as coming within the term of "Alabama claims," viz: the Sumter, the Nashville, the Retribution, the Tallahassee and the Chickamauga, as to which it is now attempted

to prove that Great Britain failed to fulfil her duties to the United States. The claim from these vessels is mainly put on facilities alleged to have been afforded them in British colonial ports.

The high character of Mr. Adams, and his eminent qualifications have hitherto prevented any allusion to the anomalous position, which he occupies as an Arbitrator or Judge, after having advocated before the British government, as our resident Minister in England, those claims on the validity of which he is now called to pronounce. Nothing is better understood than that a lawyer, when raised to the bench, shall not decide the cases which he argued as counsel at the bar. The assertion that the indirect claims had been persistently urged on England, previously to the treaty, rests mainly on the despatches of Mr. Adams; while he unites with the other Arbitrators in declaring that "after the perusal of all that has been urged on the part of the government of the United States, in respect to these claims, they have arrived individually and collectively, at the conclusion that these claims do not constitute upon the principles of international law applicable to such cases, good foundation for an award of compensation or computation of damages between nations."

If arbitration is hereafter recognized as an international institution, it is essential for the success of a system, which it is proposed to substitute for an appeal to arms as a pacific solution of all controversies, that the constitution of those tribunals should be distinctly understood, and that it should be known whether the arbitrators named by the parties themselves should be the advocates of their respective countries, or whether they should, equally with those appointed by foreign powers, decide impartially as judges.

We have no official publication of the Tribunal since the withdrawal of the *indirect* claims, and if it be correct, as the public journals of to-day announce, that the questions of law there mentioned are still under adjudication, it is evident, in as much as they reach the very foundation of the controversy, that no decision as to the merits of the cases, confessedly within their jurisdiction, has as yet been arrived at by the arbitrators.

W. B. LAWRENCE.

Ochre Point, Newport, Rhode Island, 12th of August, 1872.

TREATY OF WASHINGTON.

OCHRE POINT, NEWPORT, R. I., }
May 21, 1871. }

To the Editor of the World:

SIR: I had intended to prepare a memoir, tracing to their origin the several points of dispute involved in the new treaty. For this I have extensive materials, not merely in printed documents, but in the notes which I have made during many years past, going back, in reference to some of the subjects, to my connection with the English mission. Interruptions which I could not prevent have so far retarded my work that I fear that I shall not be able to complete the paper, in a manner satisfactory to myself, before the interest in it will be, in a great measure, lost by the final action of the Senate. I, therefore, take the liberty of sending you this imperfect memorandum.

The able articles which have, from time to time, appeared in the *World* on the topics now involved, and with which, as well as with your remarks on the merits of the work of the High Commission, I fully concur, supersede the necessity for your readers of further elaborate elucidations. I cannot, however, withhold the expression of my gratification that, regardless of its bearing on mere partisan politics, you have taken a statesmanlike view of the

subject, appropriate to a journal of controlling influence, and which, as to what concerns our international relations, ought to have no other guide than the honor and interest of our country.

The merit, in my eyes, of the treaty arises as much from what is not in it as from its positive stipulations. The reproduction in the paper ascribed to Lord Tenterden, and which contains an authoritative exposition of the British case so far as regards the Alabama claims, of my remarks made at the Social Science Congress at Bristol in 1869, may justify a reference, without incurring the charge of presumption, to the accordance of the views then expressed with the terms of the present arrangement. I am well satisfied to find that no sanction is anywhere given to the complaints against the issue of the British proclamation of neutrality, put forward by Mr. Seward, apparently in ignorance of the distinction between the recognition of belligerent rights and the acknowledgment of the independence of a State.*

It has ever seemed to me that as the law of nations cannot be enforced by any penal legislation, like the internal law of a State, and must depend for its observance on the moral sense of the civilized world, to attempt to apply to it considerations of temporary expediency is to take from it its only sanction.

Important as the law of nations is as a rule in the intercourse of independent sovereignties, the necessity of its recognition in civil wars—that is to say in the contests between members of the same society, which, passing beyond the intervension of the magistrate or suppression by the police, have assumed a belligerent character in the opposing array of regularly constituted armies—is even more imperative than in international hostilities. Who can tell to what extent the horrors of war would be augmented (though we may have some indications of it in the contest between the Commune and the Versailles Assembly) if the rules of belligerency were not applied in those cases in which, as it is

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*"It is notorious, that neither England nor France acknowledged the Southern Confederacy, as a *new State*. The Cabinets of both countries may have wished to see the Union of the United States severed into two political groups, and to see the menacing preponderance of the great confederation crushed, but they took good care to avoid the premature acknowledgement of the "Confederacy" as a political body definitively separated from the Northern Union.

On the other hand, the European powers absolutely acknowledged, at an early day, the Southern States as a belligerent party. Were they wrong in doing so?"—*Bluntschili—Opinion imparttale sur la question de l' Alabama.*

well said by Vattel, "civil wars, breaking the bonds of society and of the government, give rise in a nation to two independent parties who acknowledge no common judge."

In our late civil war, so far as the parties directly involved in it were concerned, the apprehension of retaliation, always appealed to when the two sides approximate to one another in strength, prevented the application of measures which were threatened in the first proclamation of the President. Though some privateersmen were subjected to a trial for piracy, a cartel was signed in July, 1862, by a general officer of the United States, and a general officer of the Confederates, described as "having been commissioned by the authorities they respectively represented," for a general exchange of prisoners, and in this were included prisoners taken on board of private armed vessels.

Though all other countries, with the exception, perhaps, of China and Turkey, equally with Great Britain, recognized the belligerent rights of the confederates, and though any other course would have justly exposed her to the reproach of having violated all the safe precedents of international law, the instructions, which Mr. Adams constantly evaded, to demand the revocation of the proclamation were incessant, and all the injuries resulting from the maritime operations of the confederates were attributed to the recognition of belligerent rights—in other words, to England having refused, what the United States themselves did not dare to do, to treat the confederates as out of the protection of the law of nations. As Mr. Canning, in the analogous case of the Greek revolution, explained, there is no alternative, if the belligerency of the revolutionary party was not acknowledged, but to regard them as pirates and hold the ancient government responsible for all injuries inflicted by them.

It was in vain that Great Britain showed that the United States had given to the world the strongest evidence of the existence of actual war by the establishment, among other acts, of a blockade which could only exist as an incident of war; while, unless there was belligerency, there was no excuse for the search of neutral vessels, much less for their condemnation for violating a blockade or carrying contraband. The blockade was only one of the consequences of the existence of war; and whether it was officially announced or not to the British government, before the issue of the Queen's proclamation, as I have elswhere had frequent

occasion to remark, was wholly immaterial, provided a civil war then existed. That the proclamation had no unfriendly character may be reasonably inferred from the fact, that it was advocated by the best friends of the northern cause, including Mr. Forster, and was considered by Mr. Seward's minister, Mr. Adams, to be, in some respects, advantageous to the United States. "At any rate," he said in a dispatch to the Secretary of State, "the act had released the government of the United States from responsibility for any misdeeds of the rebels towards Great Britain. If any of their people should capture or maltreat a British vessel on the ocean, the reclamation must be made only upon those who had authorized the wrong. The United States would not be liable."

That, as a precautionary measure for the interests of British commerce, it was not premature, was judicially established in the "prize cases" decided by the Supreme Court of the United States. A capture was made as early as the 12th of May, of a British vessel, for running the blockade of Charleston, the President's message declaring the blockade, which was issued the 19th of April, having gone into operation the 30th of the same month. The British proclamation bears date the 13th of May.

Vessels and cargoes of the aggregate value of millions were captured on the ground of the violation of the neutral obligations of England, and the rule of continuous voyages was applied, in a more stringent sense than ever had been attempted by Lord Stowell, to cases of blockade and contraband, before any knowledge could possibly have been received, on this side of the Atlantic, of the existence of the Queen's proclamation.

If there was no belligerency, nothing can be clearer than that those captures were all unauthorized. Consequently, the proceeds of the prizes would constitute a legitimate claim against the United States.

Nor is it a slight evidence of the fallacy of Mr. Seward's position as to confederate recognition, that it has received no sanction from the most eminent of our own publicists, President Woolsey having rejected it as altogether untenable. It was stated by the publisher, Little, in his testimony in the case of Lawrence *vs.* Dana, that Mr. Seward had refused to take copies of the second edition of Lawrence's Wheaton, as Mr. Marcy had of the first, for our ministers and consuls abroad, on account of the author's repudiation, branded as disloyal, of the Secretary's doctrines, and

that Mr. Dana was employed to make a loyal book; yet Lord Tenterden, in the paper referred to, says that "the strongest arguments in favor of the recognition of confederate belligerency are to be found in the notes of Mr. Dana's eighth edition of Wheaton.'"

A still more important circumstance, in this connection, is the view uniformly taken of the matter by our minister in London. I have already referred to Mr. Adams's despatch, showing that the recognition of rebel belligerency was not without its advantages for us. In another of 15th of April, 1867, he fully relieves himself from all responsibility for the policy enjoined on him. Having been asked his opinion by Mr. Seward, "in regard to what appears to be the only obstacle to arbitration left," he tells him that if the question of recognizing belligerency could be susceptible of being submitted to umpirage the doing so would not be advisable for us.

"The concession of a possibility that the exercise of that sovereign right of a State could be drawn into question might have the effect of tying our own hands in future cases." He adds: "As it is, the very agitation of that question in America, to which you allude as connected with the inchoate Irish movement, has the effect of undermining the foundation of our claim to complain in the present instance. It must be obvious to you that the adoption of the propositions pressed in Congress must have the necessary effect of weakening our chances of getting any valuable result at all from arbitration; for if we follow the suit of England when the respective positions come to be reversed, I do not perceive how we do not, *pari passu*, come to justify her conduct."

It is not my intention to be the apologist of Great Britain, but, in view of the pendency of the treaty before the Senate, and of its impartial discussion, it may not be improper to suggest that, had England wished to avail herself to our detriment of the internal difficulties in which we were involved, she had many means of doing so without exposing herself to any claims for vindictive damages. No rule of international law prevents a country from opening its ports to privateers or to the prizes made by them or by public cruisers, provided it does it equally as to both parties, and though a prize court cannot sit in a neutral country, prizes taken into a neutral port may be condemned in the courts of the belligerent.

Now, in reference to either the United States or th e confederates as is shown in the abortive attempt of Mr. Seward to involve England and France in our contest by a convention with the United States adopting the rule of the "declaration of Paris," but which neither would sign without stating that it had no application to the existing war, it is apparent that England would not have considered the admission of privateers or their prizes into her ports as repugnant to her obligations as a party to that "declaration."

Nor were the United States invulnerable as to the efficacy of the blockade, especially when first established. When the "declaration of Paris" was made, it was announced in the English Parliament that, if the rule of blockade as there laid down was carried out, the whole British navy, in the event of a war, would not be, adequate to the blockade of the French ports.

It would seem, even according to the official article inserted in the *Moniteur*, after the visit of Roebuck and Lindsay to Compiegne, that, had England consented, France was quite ready to acknowledge the independence of the confederates and to set at naught the blockade, which was sustained by vessels suddenly converted from merchantmen into ships of war, and in no condition to resist the combined navies of England and France. What the views of the Emperor were as to the southern confederacy appears in his letters to the officers sent out to Mexico, which were published at the time and never disavowed. In one of them he says: "We have an interest in this, that the republic of the United States be powerful and prosperous; but we have none in this, that she should seize possession of all the Mexican Gulf, dominate from thence the Antilles as well as South America, and be the sole dispenser of the products of the New World."

While I could never see any force in the alleged offence imputed to the Queen's proclamation, and have so declared, I have always maintained that England was liable for the depredations of confederate cruisers, which had been built for them or fitted out in English ports with the intention of being employed against the United States; and most especially was she so liable for the acts of such cruisers, wherever built or equipped, as had made either England or her colonies the base of hostile expeditions. And in considering this matter it is wholly immaterial what construction was given by her courts to her neutrality acts. Neither the obligation of Great Britain nor our rights are to be tested by the adjudica-

tions of her tribunals, especially of her common law courts, but only by the law of nations. This, indeed, is recognized in the regret expressed by Her Britanic Majesty for the escape, under whatever circumstances, of the Alabama and other vessels from British ports, and for the depredations committed by those vessels, and this avowal is made, notwithstanding the decision in the Alexandra.

There is certainly no little difficulty in always determining what acts affecting belligerents a neutral State can lawfully do. The rule formerly was that both the State and its citizens might do what they pleased in aiding either party, provided they treated them both alike; and cases have occurred where a nation has been permitted to furnish to a belligerent military aid when that aid had been stipulated in a treaty antecedent to the war. A provision in the treaty of 1778, with France, allowed her to carry her prizes into our ports, while those of her enemy were forbidden to enter except for stress of weather; and the difficulties which it occasioned are familiar to all conversant with our early diplomatic history.

It does not seem very easy to explain why a sale of munitions of war in a neutral country, by individnals, to a belligerent should be free from any violation of neutral duties, while the sale of a ship should not be so. Indeed, it has been held by the Supreme Court of the United States that an armed ship may be sent abroad to seek a market like any other commodity, and, when abroad, sold to a belligerent. The simplest rule for obviating all difficulties between neutrals and belligerents would undoubtedly be to impose on the neutral government the obligation of preventing contraband from ever being shipped by its own citizens; and this would have the further advantage of abolishing the right of search, which, since the general adoption of the rule that neutral goods are safe in enemy's ships and enemy's goods in neutral vessels, only exists for contraband. This, it may be added, is the course advocated by many eminent publicists, and so far as vessels are concerned it would seem to have been adopted in the recent British Neutrality act.

By the law of nations, as now understood, though munitions of war may be sold in a neutral country to be used against a State at peace with it, yet it is held, and all the late controversy turns on considerations connected therewith, that a ship is not in the same

category, and that though, as we have said, she may be sent abroad to seek a purchaser, she cannot be sold at home to a belligerent. I have not been able to see any other ground for the distinction than that which connects itself with the well recognized rule which forbids, in all cases, a neutral to permit his territory to be used as the base of hostile operations. There is here no difference as to the breach of neutrality, whether the capture be made in neutral waters by a vessel wherever fitted out, or on the high seas, when the cruiser has been built or fitted out in a neutral port. It is the power of carrying on war, when leaving the neutral port, which essentially distinguishes the sale of a ship in the neutral country from the sale of munitions of war, which, by themselves would be of no avail. It is unneccessary to say that a mere technical evasion —as by sailing unarmed and taking the guns on board outside of the port—in nowise alters the position of the parties, according to the law of nations, whatever its effect may be in construing a municipal statute.

I would not, however, be understood to contend that it would be the duty or even the right of a neutral to pursue the offending belligerent beyond his own territorial limits for a violation of neutrality within his jurisdiction, and our own courts have held that though restitution would be made of the property unlawfully taken, when brought within our power, we have not the right to award damages against the captor, or to proceed against a vessel itself, whether a public ship or a privateer, having the sovereign's commission, which had offended against our neutrality. The course of England, in following the Portugese expedition, in 1829, to Terceira, was condemned, in his place in Parliament, by that eminent expounder of international law, Sir James Mackintosh.

Viewed in the light in which we have been considering it, there is no difference in principle between our duty to England, so promptly recognized at the commencement of the French revolution, and the obligations of that country to us during the late civil war, though the circumstances were different. I particularly refer to what occurred in the time of Washington, because the United States then had no neutrality laws,—the first act having been passed in 1794,—and whatever was done was based on the law of nations. The United States were then neutral, but they were bound by the treaty of 1778 with France, made long before the existing war, and which has been alluded to as giving to her the

right, exclusive of her enemies, of bringing her prizes into the ports of the United States. The grievance was not that she sent her prizes there,—a right which England did not dispute,—but that she used our ports for the purpose of fitting out privateers to cruize against English commerce and that captures were made within our limits.

No prizes made by confederate vessels, whether fitted out in English ports or not, were brought within British jurisdiction and consequently no restitution in specie, as in our case, could be made. They were kept out by a general prohibition, to which reference has been made as entitling England to some regard on our part; but the depredations on our commerce, by cruisers fitted out or built in England, in the burning of our vessels at sea, were not less disastrous than if an English asylum had been open to them. Though the French prizes were brought into our ports, and were therefore in a certain sense, within our power, it was not, beside the danger that we incurred from France, an easy task for our government to comply with the demands for restitution. Nice questions were raised as to the respective powers of the executive and judiciary in such cases. General Washington did not, however, rest his course as to a foreign nation, on any technical ground not defensible under the law of nations; but it was only through the exercise, by our admiralty courts, of a power, for which Sir Travers Twiss says no English precedent can be found since the time of Sir Lionel Jenkins, that the restitution was effected. Such an exercise of power by our courts was confessedly an exception to the general rule, that the trial of captures on the high seas belongs exclusively to the courts of the nation to which the captors belong. Our courts, however, held, and continue to hold, that if the capture be made within the territorial limits of a neutral country into which the prize is brought, or by a privateer which has been illegally equipped in such neutral country, the prize courts of that country not only possess the power, but it is their duty to restore the property to the owner. This was done to the private claimant, though the propriety of that course, without the intervention of his government, has been questioned by Judge Story. Not only was restitution made where the prizes were within our territory, whenever that could be done without involving us in a conflict with France, but where it could not, compensation in specified cases was made by us under the

treaty of 1794; a fact which will afford to the British High Commissioners a precedent, if their course should be questioned in their own country.

The correspondence between the two governments after the Alabama escaped in 1862, interspersed with complaints about premature recognition, was mainly taken up with accounts of Mr. Adams's efforts to induce the English courts to carry into effect their own neutrality laws, while we were met by being reminded of similar reclamations made on us by the Spanish and Portuguese governments during the revolutions in South America.

Contrary to the course of the United States in confiding the execution of her neutrality acts, including that of 1818, to the admiralty courts, the English act of 1819 gave jurisdiction to the common law courts; and the case of the Alexandra, which was formally decided in favor of the defendant, though the opinions of the judges of the Court of Exchequer were divided on a technical question of construction, produced an irritation in the minds of the American people which neither the decision, in a contrary sense, of a Scotch court, nor even the interposition of the government in the purchase of the Anglo-Chinese squadron, supposed to be intended for the South, had any effect in allaying. In our diplomatic correspondence, if it be permitted here to make any comment on it, it would seem to be a matter to be noticed that we allowed ourselves to be drawn into a discussion whether the English laws had or had not been executed, thus apparently withdrawing the case from its only true test, the law of nations.

That the United States had at least a *prima facie* claim for indemnity is admitted by the preamble of the first article of the treaty, expressing the regret of her Majesty's government "for the escape, under whatever circumstances, of the Alabama and other vessels from British ports, and for the depredations committed by those vessels."

Nor since Earl Russell, during whose administration of the Department of Foreign Affairs these untoward events occurred, has there been any indisposition to submit the questions arising from the Alabama claims—as well as others which the subjects or citizens of the one country had against the government of the other—to international adjudication.

A proposition for a treaty to settle general claims was made by Mr. Seward in 1862, before the Alabama matter arose. It was

renewed by Lord Russell in 1865, but he stated that in his proposal the Alabama and other similar claims were not included. In March 1867, however, Lord Stanley submitted a proposition for a limited reference to arbitration in the so-called Alabama claims, and adjudication, by means of a mixed commission, of general claims; a proposition which seems to have been the precedent for that which led to the appointment of the High Commission. That the matter then failed arose from the persistency of Mr. Seward in maintaining, despite the remonstrance of Mr. Adams, that the national injuries sustained by the United States, from what was declared to be the premature recognition of the confederate belligerency, should be embraced in the arrangement.

Lord Stanley had, in November preceeding, said that her Majesty's government could not consent to refer to a foreign power to determine whether the policy of recognizing the confederate belligerency was or was not suitable to the circumstances of the time when that recognition was made. Mr. Seward, in answer, said that the United States government would not object to arbitration, but would expect to refer the controversy just as it is found in the correspondence which had taken place between the two governments, with such further evidence and arguments as either party might desire, without imposing restrictions upon the umpire. To such an unlimited reference Lord Stanley objected for this, among other reasons, that it would compel the submission of the very question which he had already said he could not agree to submit.

Further negotiations on this subject were postponed to the naturalization and San Juan conventions. Mr. Johnson, in going to London in 1868, was instructed that those questions must be arranged before any discussion on the claims convention could be entertained. Whatever excitement might have heretofore prevailed as to the rights of naturalized citizens, the present importance, in the view of the American people, of the former of these matters would seem to have been exaggerated. The law officers of the crown declared that no naturalization convention could be made without affecting essentially the operations of the laws of descent and of many other portions of the common law, and they suggested that similar changes in the law of the American States, which retained the common law, would be necessary. A convention which had been preceded by a protocol, in order to await the

action of Parliment, was concluded, March 13, 1870, a statute making the required changes in the law having passed the preceeding day; yet it would appear from the debates in the New York Senate, that, when an act was introduced at the late session to make the laws of that State conform to the treaty by adopting an act founded on the English statute, the Senator, whose argument had a controlling influence, was ignorant alike of the convention, and of the Expatriation act of Congress, which had induced the Federal government to conclude it.*

The requisite protocols having been signed on both the other subjects, Mr. Johnson attempted an arrangement of a Claims convention, in a mode by which to avoid any mention of the apparently irreconcilable views of the two countries. This, Mr. Johnson tells us, was accomplished as well in the treaty of November 10, 1868, which was rejected by the President without being submitted to the Senate, as in that of the 14th of January, 1869, by the general terms of the reference of all claims arising since 1853 of the citizens of the one State on the government of the other, whether or not arising out of the civil war. A clause was inserted at Mr. Seward's special suggestion, in the second article of the treaty of January 14, 1869, requiring that "the official correspondence which has taken place between the two governments, respecting any claims, shall be laid before the commission." This, it was supposed, would secure the notice of the subject of rebel belligerency by the soverign, whose appointment for the purpose of the Alabama claims, so-called, (which though particularly named, were included in a general reference,) was contemplated, an ordinary umpire, chosen by the parties or by lot, serving in the other cases.

But though the alleged heinous offence of Great Britain, in regard to the recognition of the belligerent rights, was condoned by

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*The conflict of the naturalization treaties of the United States with the State laws, especially with those of the State of New York, relative to the transmission of real estate to aliens, was the subject of a treatise, by the present writer, in 1871. The effort was so far successful as to lead, on the recommendation of the Governor (Hoffman) to the removal of disabilities from American women married abroad. An act was passed, March 20, 1871, by the Legislature of New York, to authorize the descent of real estate to female citizens of the United States and their descendants, notwithstanding their marriage with aliens. Further legislation, however, is necessary, to make the laws of that State, especially as to the descent of real estate, harmonize with the treaties with England and other powers. It would seem that even the English naturalization act, passed in anticipation of the treaty with the United States, has not met all the contingencies for which it was intended to provide.—*See Solicitors' Journal, Vol. XVI, p. 727.*

the author of the complaint, it was not so by the very accomplished scholar then at the head of the Committee on Foreign Affairs, and to whom it is impossible to impute ignorance, either of political history or of the rules of international law. As Mr. Sumner's speech, presenting a most formidable bill of indictment against Great Britain, at the head of which he places the Queen's proclamation of neutrality, and from the consequence of which he deduces claims, not only for the destruction of property by the confederate cruisers but for untold millions for the expenses of the protracted war, was published with the consent of the Senate, we are bound to ascribe to his reasoning the nearly unanimous rejection of Mr. Johnson's treaty. Mr. Motley, moreover, in his earlier intercourse with Lord Clarendon, stated, with respect to the treaty: "The time at which it was signed was thought most inopportune, as the late President and his government were virtually out of office and their successors could not be consulted on this grave question. The convention was further objected to because it embraced only the claims of individuals and had no reference to those of the two governments on each other; and lastly, that it settled no question and laid down no principle."

Nor did the prospects of adjustment seem to have been much improved by the inauguration of the new administration. While not basing our rights to redress for the Alabama claims solely on the action of the British government at the commencement of the secession, the American government continued to consider the recognition as an unfriendly proceeding and leading to other consequences for which claims for indemnity were due. The course of the American Minister at London in exaggerating his instructions on this point, and in assuming, as it were, the prerogative of making war in his menaces to the British government, had induced a state of things which seemed to render any further attempt at negotiations impracticable; but the reasons assigned for his recall, and in which his course was fully disavowed, having satisfied the government of Great Britain that a change of policy had occurred at Washington, a measure, in appointing a board of commissioners, eminent for their rank and public station, to meet plenipotentiaries on the part of the United States, was inaugurated, thereby showing the importance attached by England to the maintenance of friendly relations with the United States. It has resulted in a treaty now before the Senate for ratification, which,

instead of being confined to a single point, sets at rest all those questions which have so repeatedly given rise to angry discussions between the two powers.

The treaty proposes, as in the original suggestion of Lord Stanley in 1867, a special reference of the Alabama claims. Five arbitrators are to be named, one each by the United States, Great Britain, the King of Italy, the President of the Swiss Confederation, and the Emperor of Brazil, or in case of the omission of either of the three last named sovereigns, by the King of Sweden and Norway. They are to determine as to each vessel separately whether Great Britain had failed to fulfil the duties set forth by the prescribed rules laid down in the treaty, and if so they may award a sum in gross to be distributed by the United States, or they may agree that a board of assessors to be appointed by the President, by Her Britanic Majesty, and by the King of Italy, shall ascertain and determine what claims are valid, and what amount or amounts shall be paid by Great Britain to the United States, on account of the liability arising from such failure, as to each vessel, according to the extent of such liability as decided by the arbitrators. What ought to commend this portion of the treaty to us is that the rules which are to be the basis of the adjudication are essentially the same as were adopted by our govrmment in the Presidency of Washington, and when Jefferson was Secretary of State. Their importance will justify inserting them entire.

"A neutral government is bound," it is said, "First, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or carry on war against a power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction to warlike use.

"Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms or the recruitment of men.*

* A suggestion is understood to have been made in the Senate, and it has also been made in England, that the last clause of the second rule might extend to a general prohibition of the supplying of munitions of war by a neutral to a belligerent. For this, we think there is no reason. The context, as well as the declared object of the rules, shows that the clause can only refer to military supplies, arms or men furnished for the naval operations, of which the neutral ports or waters are the base; in other words, the scope of that clause is controlled by the preceding one.

"Thirdly, to exercise due diligence in its own waters, and as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties."

Though it is declared in the treaty that the British government cannot admit that the rules which are thus established were in force at the time when the claims, to which it is agreed that they should apply, arose, yet they are not only to be recognized as hereafter binding between the two nations, but their influence is pledged to have them acknowledged by all the other States.

The sanction of the English government has been, indeed, given to measures even more stringent. So far back as January 1867, a commission was appointed consisting of some of the most eminent English jurists, including Phillimore, Twiss, and Vernon Harcourt, all high authorities in international law, and to which Mr. Abbot, (now Lord Tenterden) was attached in the capacity that he at present holds to the High Commission at Washington. The result of their labors was embodied in the act of 9th of August 1870, the passage of which was hastened by the Franco-Prussian war. This act prohibits the building, or causing to be built, by any person within Her Majesty's dominions any ship with intent or knowledge of its being employed in the military or naval service of any foreign State, at war with any friendly State; issuing or delivering any commission for any such ship; equipping any such ship, or dispatching or causing any such ship to be dispatched for such purpose. It is deserving of notice that Mr. Vernon Harcourt dissented to that portion of the report of the commissioners that applied to the prohibition of ship building. Jurisdiction in cases under the act, is given to the Court of Admirality, which is not the least important amendment of the law.*

The proposed reference, in 1862, by Mr. Seward, to a mixed commission reached all claims of the citizens or subjects of the one country on the government of the other since 1853, and such also was the provision of the conventions negotiated by Mr. Johnson. It does not appear why the authority of the commission for the claims, other than the Alabama claims, is now less comprehensive, though its practical effect is to preclude any claims for the

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*Sir Robert Phillimore, in the second edition of his Commentaries, recently published, in noticing two cases decided by him, under the foreign enlistment act of 1870, cites the words of our text approving of the transfer of jurisdiction to the Court of Admiralty,

Fenian raids into Canada, which were presented by the British Commissioners, but withdrawn. They did not occur till 1866. Sir Edward Thornton, in his note to Mr. Fish, of February 1, 1871, only refers to claims arising out of acts committed during the civil war. By the terms of the Convention, it applies to claims arising out of acts committed "against persons and property" during the period between the 13th of April, 1861, and the 9th of April, 1865. These claims are referred to a commission of three members, one to be appointed by the Queen, one by the President, and the third by the two governments conjointly, or if they cannot agree within the prescribed time, by the representative of the King of Spain, at Washington.

It has been objected to this commission that claims might be preferred for slaves liberated at the south, and for injuries sustained by Englishmen, domiciled or otherwise there, in consequence of the ravages of the war, and in cases in which American citizens could have no claims. Both of these objections are, however, untenable, as dealing in slaves, or even owning them, has long been made, on the part of an English subject, no matter where he may be resident, a felony; and since Mr. Marcy's note of February, 1857, to M. de Sartiges, on account of the destruction of property at the bombardment of Greytown, it is no longer a question but that foreigners must take the same risk as to their property, in a country exposed to the hazards of war, as the inhabitants do. This note was not only deemed conclusive by France, whose claims were withdrawn, but was referred to in the English Parliament by Lord Palmerston, as being unanswerable. (Lawrence's Wheaton, 2d Ed., 174). I have cited in my *Commentaire*, tom. III, p 128, from the *Annuaire des Deux Mondes* and *Annuaire de Lesur*, the cases, occuring in 1849-50 of the reclamations of England at Naples and Florence on account of losses sustained by her subjects during the civil commotions in Italy, and in which Austria and Russia intervened on behalf of those States. The answers of the English government to their subjects in France during the Franco-Prussian war, eschewed all intervention for losses sustained by them; and the views there expressed would be applicable to any similar pretensions of Englishmen for property taken or destroyed in our civil war, as the result of hostilities. So far as regards maritime prizes, it is a well recognized principle, that no claim can be made on the government of the captor, till all the remedies provided

through the Prize Courts have been exhausted, and then only in case of a seizure contrary to the law of nations.

With respect to the fisheries. As in 1818, *liberty* was substituted for *right*, a word for which John Adams so earnestly contended at the treaty of 1783, and the perpetual character of which right was, as we conceive, so clearly established by John Quincy Adams, there is not now, nor was there when the reciprocity treaty was negotiated by Lord Elgin and Secretary Marcy in 1854, any longer a question of principle involved, but a mere matter of bargain, the details of which it is not necessary to examine here. This last remark is applicable to other portions of the treaty, as those respecting the transit of goods and other facilities of trade.*

The articles, as to the fisheries, as well as the one respecting the reciprocal transit of goods between the United States and the British North American possessions, are not to go into effect till the necessary laws shall be passed by the Imperial Parliament, the Parliament of Canada, and the Legislature of Prince Edward Island on the one hand, and by the Congress of the United States on the other. These articles are to remain in force for ten years, and further, until the expiration of two years, (which is substituted for twelve months in the former treaty,) after either party has given notice to terminate the same. There is no reference in the treaty to the fisheries of the Pacific coast nor to the fisheries of the Great Lakes.

The application of the articles as to the fisheries is made contingent with respect to Newfoundland, upon the action of the Imperial Parliament, the Legislature of Newfoundland, and the Congress of the United States. It will be recollected that a convention made between France and England, in 1857, on the subject of

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*It had been contended by American publicists, though the point does not seem to have been discussed before the Commissioners that the Convention of 1818 was abrogated by the treaty of 1854 and that when that treaty was terminated in 1866, the treaty of 1818 was not revived, but the treaty of 1783 was, the latter being a treaty of partition it was not affected, it was claimed, even by the war of 1812.

The provisions as to the extent of the fisheries are the same in the treaty of 1871 as in that of 1854. Instead of the reciprocity as to the numerous articles enumerated in the treaty of 1854, the present treaty confines the right of admission. duty free, in each country respectively, to fish oil and fish. It moreover provides for the appointment of commissioners to determine, having regard to the privileges accorded by the United States to the subject of Her Britanic Majesty, the amount of any compensation, which, in their opinion ought to bea pid by the United States to Great Britain, in return for the privileges accorded to the citizens of the United States.

the fisheries, was rendered of no effect on account of the refusal of the colony of Newfoundland to give its assent, but the action of that colony will not, on the present occasion, affect the rest of the treaty.

The northwestern boundary (as well as the northeastern, which was in conformity to a convention then made, referred to the King of the Netherlands) and the navigation of the St. Lawrence are old acquaintances, having been included in the negotiations of 1826—7, originally confided to Mr. Rufus King and Mr. Gallatin, but which, owing to the illness of Mr. King, devolved exclusively on the latter. The rights of the United States in all these cases were made the subjects of elaborate memoirs, with the preparation of which, as the secretary of the mission, I became familiar, while many matters connected with these discussions were confided to me on the departure of Mr. Gallatin. At that time nothing further was done as to the boundaries on the northwest coast than to continue indefinitely the provision for joint occupancy, stipulated for in the treaty of 1818. Either party was to be at liberty to abrogate the convention on a notice of twelve months to the other party.

A notice was actually given by the United States, in pursuance of a resolution of Congress, passed April 27th, 1846. The convention of June 15th following, establishing the boundary line between the United States and the British possessions west of the Rocky mountains, only left to be determined a question, which the convention itself created, as to the channel intended to be indicated, separating Vancouver's Island from the continent. By the new treaty it is left to the Emperor of Germany to decide which of the channels claimed is most in accordance with the treaty of 1846.

At the time of the negotiations of 1826—7, to which I have referred, the British plenipotentiaries would entertain no proposition founded on the right of the United States to navigate the River St. Lawrence to the sea. Nor was it till the treaty of 1854, that any conventional arrangement was made on that subject. By that convention, the citizens and inhabitants of the United States were to have the right to navigate the River St. Lawrence and the canals in Canada used for communicating between the great lakes and the Atlantic Ocean as freely as the subjects of her Britanic Majesty, subject only to the same rates, and British subjects were

to have the right of navigating freely Lake Michigan so long as the privilege of navigating the River St. Lawrence should continue. The British Government had reserved the right of suspending the privilege, on their part, on giving due notice to the United States, in which case, the latter might suspend, as affected Canada, the free trade reciprocity article. By the present treaty, the navigation of the River St. Lawrence, ascending and descending, from the 45th parallel of north latitude, where it ceases to be a boundary between the two countries, from, to, and into the sea, shall remain forever free and open for commerce to the citizens of the United States, subject to any laws and regulations of Great Britain or Canada not inconsistent with the privilege of free navigation. The like privilege is accorded to the subjects of Great Britain for the navigation of the rivers Yukon, Porcupine and Stikine; but the navigation of Lake Michigan, subject in like manner to the laws and regulations of the United States, is only conceded to the subjects of Great Britain for the same period as is provided for the fishery articles. There is a provision also as to the use of the canals. The British government agree to urge on the government of Canada to secure to the United States the use of certain canals on an equality with the inhabitants of the Dominion, and the United States agree that British subjects shall have the like use of the St. Clair Flats Canal, and the President is to urge on the State governments to secure to them the State canals connected with the navigation of the lakes or rivers traversed by or contiguous to the boundary between the possessions of the two powers.

W. B. Lawrence.

To the Editor of the Providence Journal:

The kind notice which you took of my letter to the *World* on the recent treaty with England, in your paper of Monday, induces me to suppose that the inclosed memorandum may not be without interest to your readers. It establishes from the notes of Mr. Jefferson to the English and French ministers, the accordance, before any neutrality act was passed by Congress, of the principles of international law, as maintained in General Washington's administration, with the rules laid down in the late treaty for the adjudication of the Alabama claims.

W. B. Lawrence.

Ochre Point, Newport, June 1, 1871.

Mr. Jefferson, Secretary of State, writing to Mr. Hammond, British Minister, under date of May 15, 1793, after stating that an alleged condemnation of a British prize by the French Consul at Charleston was a legal nullity, and can make no part in the title of a vessel, though it was an act of disrespect towards the United States, asserts that the purchase of arms and military accoutrements by an agent of the French government, in this country, with an intent to export them to France, is permitted by the law of

nations. "It (the law of nations) is satisfied with the external penalty pronounced by the President's proclamation,—that of confiscation of such portion of these arms as shall fall into the hands of any of the belligerents on the way to the ports of their enemies. To this penalty our citizens are warned that they will be abandoned.

"The capture of the British ship George, by the French frigate *L'Embuscade*, has, on inquiry, been found to have taken place within the Bay of Delaware and jurisdiction of the United States. The government is, therefore taking measures for the liberation of the crew and restitution of the ship and cargo.

"It condemns, in the highest degree, the conduct of any of our citizens who may personally engage in committing hostilities at sea against any of the nations, parties to the present war, and will exert all the means with which the laws and Constitution have armed them to discover such as offend herein, and bring them to condign punishment.

"The practice of commissioning, equipping and manning vessels in our ports to cruise on any of the belligerent parties is equally and entirely disapproved; and the government will take effectual measures to prevent a repetition of it."

In a note from Mr. Jefferson to Mr. Genet, Minister of France, dated August 7, 1793, it is said: "I have it in charge to inform you that the President considers the United States as bound, pursuant to positive assurances given in conformity to the laws of neutrality, to effectuate the restoration of or to make compensation for prizes, which shall have been made of any of the parties at war with France, subsequently to the fifth day of June last, by privateers fitted out of our ports.

"That it is consequently expected that you will cause restitution to be made of all prizes taken and brought into our ports subsequent to the above mentioned day, by such privateers, in defect of which, the President considers it as incumbent upon the United States to indemnify the owners of those prizes, the indemnification to be reimbursed by the French nation."

In a note to Mr. Hammond, dated September 5, 1793, and which was subsequently annexed to the treaty of 1794, Mr. Jefferson says: "Having for particular reasons foreborne to use all the *measures in our power* for the restitution of the three vessels mentioned in my letter of August 7, the President thought it incumbent on

the United States to make compensation for them; and though nothing was said in that letter of other vessels taken under like circumstances, and brought in after the date of that letter, the President determined that all the means in our power should be used for their restitution. If these fail us, as we should not be bound by our treaties to make compensation to the other powers, in the analogous case, he did not mean to give an opinion that it ought to be done to Great Britain. But still, if any cases shall arise subsequent to that date, the circumstances of which shall place them on similar grounds with those before it, the President would think compensation equally incumbent on the United States." [Jefferson's Works, vol. III., pp. 229, 265, 285.]

By Art. VII, treaty of 19th November, 1794, (Jay's treaty:) "It is agreed that in all such cases where restitution shall not have been made agreeably to the tenor of the letter from Mr. Jefferson to Mr. Hammond, dated at Philadelphia, September 5, 1793, a copy of which is annexed to this treaty, the complaints of the parties shall be, and hereby are, referred to the commissioners to be appointed by virtue of this article, who are hereby authorized and required to proceed in like manner relative to these as to the other cases committed to them." [United States Statutes at Large, Vol. VIII, p. 121.

INDIRECT CLAIMS.

Ochre Point, Newport, R. I.
April 20th, 1872.

To the Editor of the Providence Journal:

Your readers may possibly recollect a letter in reference to the Treaty of Washington, addressed to the *World*, during the pendency of the discussion of the subject before the Senate, and which you did me the honor to transfer to the Journal. In that article I endeavored to give a summary of the treaty, as I understood it, derived not merely from my intercourse at the time with the commissioners of both countries, and from the negotiations which had preceded it, but from an attentive perusal of the treaty itself. In my remarks on that portion of it which related to the *Alabama claims*, so called, I expressed my gratification at the withdrawal of all pretensions to indemnity for injuries growing out of the precipitate recognition of belligerency, pretensions which had ever, during Mr. Seward's administration of the State Department, been an obstacle to all amicable negotiation with Great Britain, though they were even then repudiated in stronger language than I had ever employed, in the work prepared, at the Secretary's suggestion, to supersede *Lawrence's Wheaton*. It is to be remembered in this connection, that it was on this recognition and not specifically on account of the violation of neutral obligations in allowing the equipment of confederate cruisers in British ports, (which was only regarded as one of the consequences of the admission,) that the demand for indefinite reclamations had been made by the American government. I also stated that such was the ground assumed by Mr. Motley, and which induced a state of things that would have rendered any further attempt at negotiation impracticable, had not the recall of that minister satisfied the government of Great Britain that a change of policy had occurred at Washington.

In my understanding of the treaty, whatever injuries the United States had sustained, otherwise than by the direct spoliation of individual property, in consequence of the escape of the Alabama and other vessels from British ports, was condoned by the expression of the regret of Her Majesty's government, while it was deemed a great concession to the United States that England should allow to be applied to the adjudication of cases that had already occurred, principles of international law, which she had only prospectively adopted. The more stringent provisions of the new British neutrality act, and the submission of the cases coming under it, as with us, to a court of admiralty, were alluded to as consequences of the discussions growing out of American reclamations. Indeed, the eminent German publicist Holtzendorf considers the adoption of the rules defining the obligations of neutrality the best atonement that could have been made to us for national injuries.

My sketch, after citing the part of the treaty which requires the arbitrators to determine as to each vessel separately, whether Great Britain had failed to fulfill the duties set forth by the prescribed rules laid down in the treaty, proceeds to say: "What ought to commend this portion of the treaty to us is that the rules which are to be the basis of the adjudication are essentially the same as were adopted by our government in the Presidency of Washington, and when Jefferson was Secretary of State."

This quotation sufficiently shows that while the treaty was under the discussion of the Senate, no indirect damages were, in my judgment contemplated, and it constitutes a sufficient answer to the statement, which, to the surprise of my friends, both at home and abroad, has appeared in several of the public journals that the "American case," in which they are presented, had been submitted to my examination and received my approval. This announcement occasioned me no little embarrassment, as, while it is very certain that in no way has my aid in any matter, relating to the treaty or otherwise affecting our foreign relations been asked by the present administration, the "case" was brought to my notice, as a matter of personal confidence,as I conceived, and under circumstances which imposed secrecy, by the gentleman to whom its preparation was entrusted.

I had no right to take any exception to the fact, that my friendly suggestions on the points now in question were not adopted, but

it is no derogation to my sentiments of personal regard for the author of the paper or to the most kindly relations which I have ever entertained towards all the parties who are responsible for the work, that I am not willing to be supposed to have acquiesed in propositions which are at variance with my well known views of public law, as well as with what I deem to be the true construction of the treaty.

I will, in this connection, add that, having been an observer of the conciliatory mode in which the negotiations preceding the treaty had been conducted at Washington, I did object, as contrary to the understanding of all parties, to those criminations for past events which I supposed it to have been the object of the treaty to terminate.

My own idea would have been to have adopted the same course as, I afterwards found, was followed in the preparation of the "English case," and to have presented a statement confined exclusively to the matters properly cognizable before the Tribunal, applying to the facts of each case the rules established by the Treaty for their adjudication. Moreover, I should, without having anticipated the recent action of the British government, have deemed it more consistent with the dignity of the country, as well as more likely to effect a favorable result with the arbitrators, not to have adduced any claims which I did not believe ought to be admitted by them; though I am quite aware that it has been supposed by foreign publicists that the United States presented the indirect demands rather as indeterminable elements, to be taken into consideration, in the moral appreciation of the facts, than as the precise basis of indemnity. And such, I have been assured was the object which Mr. Sumner had in view when he brought them to notice in his celebrated speech on the Johnson-Clarendon treaty.

As it is, the claims presented in the "American case" are: 1st, Those for direct losses growing out of the destruction of vessels and their cargoes by the insurgent cruisers. These, which were estimated at $14,000,000, during the session of the Commissioners, are stated in the documents annexed to the "case" at $19,021,428 61. The second class is for national expenditures, in pursuit of the cruisers, estimated by the Navy Department at $7,080,478 70.

These latter do not seem to have been the subject of special discussion, nor are they mentioned in the protest against the indirect

claims recently presented at Geneva. Lord Granville, however, says in a note of the 20th of March 1872, to General Schenck; "Nor did Her Majesty's government object to the introduction of claims for the expense of the pursuit of the Alabama and other vessels, notwithsanding the doubt how far these claims though mentioned during the conferences as direct claims, came within the proper scope of the arbitration." There is in the "case" a general claim for the destruction of vessels and property of the government of the United States, but in looking into vol. VII. of the "Claims of the United States against Great Britain," p. 117, to which reference is given for details, no instance of any kind is to be found except that of the revenue cutter Caleb Cushing, said to have been cut out of the harbor of Portland and destroyed by a tender to the Florida, the value of which is estimated at $25,000.*

The other claims are those which present the obstacles to the further progress of the arbitrators. They are "the loss in the transfer of the American commercial marine to the British flag, the enhanced payments of insurance, the prolongation of the war and the addition of a large sum to the cost of the war and the suppression of the rebellion." These are indefinite in amount, and may well exceed the whole indemnity paid or payable to Germany by France, on account of the recent war between those countries—for war is carried on here at a vastly greater expense than in Europe. The "case" says—what we insert as a specimen of the indirect claims—"The Tribunal will see that after the battle of Gettysburg the offensive operations of the insurgents were conducted only at sea, through these cruisers, and observing that the war was prolonged for that purpose, will be able to determine whether Great Britain ought not, in equity, to reimburse to the United States the expenses thereby entailed upon them."

If, instead of determining the pending question, according to the understanding of the parties, we are to consider the case as we would a litigated matter of private contract between individuals, it is by the treaty itself and not by the *protocol* that we are to be governed. The ratification of the Senate is essential to any international arrangement, and it has, again and again, been decided that a treaty cannot be controlled by a protocol, unless the protocol, as was done in the case of the naturalization convention with Bavaria, is itself, in terms, ratified by the Senate.

*The destruction of the war-steamer Hatteras by the Alabama, as also of a couple of barks laden with coal, is alluded to in the British counter-case.

The second article of the treaty provides that the arbitrators "shall examine and decide all questions that shall be laid before them on the part of the government of the United States and her Britanic Majesty respectively." Of course, the questions that are to be submitted are those referred to in the preamble of the 1st article, and which are confined to differences "growing out of *the acts committed by the several vessels* which have given rise to the claims generically known as the Alabama claims," that is to say, to acts of these vessels in the plunder or destruction of property.*

According to the British "case," the phrase *Alabama Claims* is understood by Her Britannic Majesty's government to embrace claims "growing out of acts committed by this vessel and other vessels, which are alleged to have been procured, like the Alama, from British ports during the war, and under circumstances more or less similar, and to be confined to such claims."

It is a received principle of the jurisprudence common to England and the United States, that damages must always be "the natural and proximate consequence of the act complained of." Had this been a controversy between individuals, would the idea of consequential damages ever suggested itself?

We have had since the commencement of our government numerous cases of reclamations on belligerent powers for the violation of our neutral rights, though I only can recall one treaty in which the United States were a party, where damages were accorded by a neutral to a belligerent. I refer to that of 1794, with Great Britain, where the claims on us were analogous to those which we now make on England. But neither on that occasion, nor in the indemnity treaties with France and the States allied with her during the reign of the first Napoleon, although most unquestionably the effects of the Berlin and Milan decrees, in connection with the British orders in council, could in no degree be measured by the actual capture and destruction of the vessels and cargoes of our merchants, was the suggestion ever made, that indemnity should go beyond compensation for the value of the property taken or destroyed.

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* The expression in the next sentence of the preamble would, if there was any thing equivocal in the preceding paragraph, shows that the treaty was intended to apply only to direct acts of these vessels. The words are, "Whereas Her Britannic Majesty has authorized her High Commissioners and Plenipotentiaries to express in a friendly spirit, the regret felt by Her Majesty's Government for the escape under whatever circumstances, of the Alabama and other vessels from British Ports and *for the depredations* committed by those vessels: now in order," &c.

It may be well to recall to mind that the indirect damages claimed by our "case," as growing out of the acts committed by the Alabama and other cruisers, are precisely of the same character, if not identical with those put forward during the whole of Mr. Seward's administration of the State Department, as a consequence of the premature recognition of Confederate belligerency, a ground of complaint which, though now reproduced in the bill of indictment against Great Britain, was supposed to have been abandoned before the negotiations of the recent High Commission were commenced.

The only light, which can be derived from the terms of the treaty itself, as to the nature of the damages to which the United States may be entitled, is from the provision in the 7th article which requires that the tribunal shall *first* determine as to each vessel, "whether Great Britain has by any act or omission failed to fulfill any of the duties set forth in the foregoing three rules, or recognized by the principles of international law not inconsistent with such rules, and shall certify such facts as to *each of the said vessels*."

As in each case determined against Great Britain, the Board of Assessors are, by the 10th article, to ascertain and determine the amount which shall be paid by Great Britain to the United States on *account* of the *liability* arising *from such* failure as to each vessel, according to the extent of such liability as decided by the arbitrators, there would seem to be no room for indirect or national damages. Besides the difficulty of deciding on a claim indeterminable in its nature, there would be the further embarrassment of apportioning the amount of injury growing out of the acts of each vessel in the general account. Is it possible that the assessors are to decide what part of the prolongation of the war is to be assigned to each vessel? Are they to apportion to them respectively the amount of losses, in the transfer of American shipping to the British flag and for enhanced insurance to which they may be supposed to have contributed? If only one case is sent to the assessors, the rest being found for Great Britain, are all the indirect damages to go with it?

I am aware that there is a provision that the arbitrators may, after they have decided as to each vessel separately, award a sum in gross for all the claims referred to them. I cannot, however perceive how that stipulation, which applies merely to

the mode of settlement, can, in anywise, extend the scope of the power of the tribunal so as to include claims not otherwise cognisable before it. If we were permitted to look out of the treaty for its meaning, we should find that the award of a gross sum was the plan originally proposed by the American Plenipotentiaries, when offering to confine our claims to the direct damages, and the inference would be that, when used elsewhere, the term was to have the same scope and no other than when originally suggested. Such a mode of settlement would in any event be a desirable arrangement. In case of a decision in our favor in respect to any portion of our claims, it would terminate the responsibility of England, and leave the distribution to be made, as has been the case in most of our treaties for indemnity, by the United States among their own citizens.

The claim of the United States for indirect damages has been attempted to be deduced from the statements in the *protocol*, as connected with the articles of the treaty, in relation to the Alabama claims. We have already shown that whatever might be the rule in Countries where the treaty making power was wholly vested in the executive, with us a protocol not ratified by the Senate, could not vary the obligations of a treaty any more than the correspondence preceding a private contract could affect its meaning; and it is quite obvious that in this case the conclusions having been arrived at by the final arrangement of the terms of the treaty, comparatively little importance might have been attached by the plenipotentiaries to a paper which was a mere history of the transaction and which did not even bear their signatures.

It is by the following phrase of this protocol that our pretensions to present the claims, which are here cited from the "case," are deemed to have been reserved. After enumerating our grievances, it is said: "In the hope of an *amicable settlement*, no estimate was made of the indirect losses, without prejudice, however, to the right to indemnification on their account in the event of *no such settlement*."*

* It sometimes happens that the term "protocol" is applied to an international agreement, drawn up with the same formalities as a "convention," or "treaty" and authenticated by the Plenipotentiaries in the same way. Various cases, cited in Lawrence's Wheaton, Ed. 1863, pp. 455, 879 will show that even such protocols, when they vary the treaty, ratified by the Senate can have with us no effect. In the present case the protocol purports to be merely a *proces verbal* of the matters discussed at the sittings, though not drawn up from day to day. Had it been, there would, probably, have been no misunderstanding as to what had been done, or proposed to be done. It bears the signatures of the protocolists, the secretaries of the English and American Commission and not those of the Plenipotentiaries, according to the rule established by the Congress of Vienna.—Martens—Guide Diplomatique ton ii. p. 525.

Supposing effect to be given to the protocol, what is the meaning of *amicable settlement?* It seems to us that the true construction of the term is to deem it as opposed to war, or reprisals, or, in general language, to "unfriendly acts." Now an agreement to refer to mutual friends is certainly not an unfriendly act. The principle is the same whether a sum is offered and accepted in satisfaction of a claim, or, especially in a case where a party is under no obligation to submit his cause to any *forum*, reference is voluntarily made to arbitrators to determine the amount, if any, which is to be paid on account of an existing difference. If the conferences had been broken off, without the conclusion of any convention, that is to say, without an *amicable settlement*, the rights of the parties would have been as they were before the commencement of negotiations, neither having conceded anything. I cannot, however, believe that after we had accepted from England an apology for the escape of the Confederate cruisers, induced her to recognize new rules of maritime law, to waive all demands for the Fenian invasions of Canada, and to make, with mutual assent, various provisions as to the other matters in the treaty, we have a right to reopen any grounds of complaint which professedly would have been concluded by an *amicable settlement.*

The note accompanying the British counter-case delivered on the 15th instant to the Board of Arbitrators at Geneva, states that a misunderstanding has unfortunately arisen between Great Britain and the United States, as to the nature and extent of the claims referred to the Tribunal by the 1st article of the Treaty of Washington. This misunderstanding relates, it is said, to claims for indirect losses under the several heads of

"1st. The losses in the transfer of the American commercial marine to the British flag; 2d. The enhanced insurance; 3d. The prolongation of the war and the addition of a large sum to the cost of the war and the suppression of the rebellion, which claims for indirect losses are not admitted to be within the scope or the intention of the reference to arbitration."

When the British protest was delivered, Mr. Bancroft Davis, the agent on the part of the United States, addressed a note to the arbitrators, stating that "his instructions not having contemplated the probability of such a course on the part of Her Majesty's government, he reserved to his government its full right hereafter to vindicate before the Tribunal the authority, which it understands the Tribunal acquired under the treaty in this respect."

It would seem that, within a few days, the point in dispute in reference to the meaning of the treaty has occupied the attention of Congress, and that it has been suggested that the United States should withdraw their claim for indirect damages. While it is universally conceded that no one has ever had the most remote idea that any award will be made on their account, it has been, as we conceive, very absurdly contended that having put forward a claim, however preposterous we ourselves may deem it, our dignity requires that it should be passed on by the arbitrators.

To extricate ourselves from the dilemma in which we are now placed, it has been suggested that the British government should allow the claim to go forward, with a pledge on our part that our arbitrator would concur in a decision rejecting it; and it has been alleged, in support of this view, that a similar course had been pursued by the Commissioners sitting at Washington, in relation to the Confederate loan. But it is said that in the case of the Washington Commissioners, the parties owning the claims were individuals; while in the present case the government of the United States is a direct party. For our own part, believing that the claim for indirect damages was unwisely presented in the first instance, we cannot but think that the magnanimous policy for the United States to adopt would be frankly to say so. We cannot but believe that such a declaration would be preferable, in every point of view, to bringing the matter formally before the Board, with the understanding beforehand that it should be unanimously rejected, even if, since the recent action of the British government, such a course should now be open to us. The dispute practically would seem to have resolved itself into a mere question of etiquette. The United States do not make the demand with the expectation of getting anything, and all that England insists on is that this little ceremony of rejecting the claims formally may not be gone through.

An abrupt termination of the Geneva Arbitration is to be deprecated, not merely on account of the several other matters involved in the treaty, which was adopted as a whole, but the failure of the tribunal for the Alabama claims would go nigh to destroy all those fond hopes, which philanthropists have entertained, of substituting international arbitration for war.

Whatever may happen with regard to the Alabama arbitration, or as to the entire Treaty of Washington, the history of our diploma-

tic relations with England emboldens us to say that no consequences, seriously affecting the material interests of either country, are likely to ensue from it.

The fact, as far as our investigations have extended, does not seem to have been adverted to, that the present is not the only arbitration that has been submitted to a sovereign power for the settlement of differences between the United States and England. In the two which preceded the Treaty of Washington, though awards were in both instances made, neither of them was carried into execution. It so happened that both of the former cases were, to a greater or less extent, matters of discussion during my own connection with the legation in London, and the facts are, therefore, deeply impressed on my memory.

The origin of the first case goes back to the stipulation in the Treaty of Ghent of 1814, that the "places taken during the war were to be restored without carrying off any slaves or other property." Differences having arisen as to the extent of this provision respecting slaves, it was agreed, by the treaty of 1818, to refer them to the arbitrament of a friendly sovereign. In 1822, an award was made by the Emperor of Russia, and Commissioners on both sides were appointed who met at Washington, to carry the award into effect, but disagreeing as they did from the beginning as to the meaning of the award, no progress had been made in the settlement of the business, when Mr. Gallatin went to London in 1826. At an early conference with Mr. Canning, the latter, seeing that the discussion was likely to be interminable, proposed a compromise, providing the United States would accept a reasonable sum *en bloc*, and an arrangement to that effect was accomplished by a convention, which abrogated the treaty of St. Petersburg and gave to the United States $1,204,964. I happen to have before me the statement of the settlement, showing that the United States received the full amount of their claims, abating one-half of the interest.

To a similar arrangement of the pending dispute, we have heard no objection made, except that Great Britain denies that there is any claim against her, and this was also the declared reason why the English commissioners refused during the negotiations to entertain the suggestion of a gross sum. She has, however, to say nothing of the indirect claims, assented to a reference, which admits the existence of claims on the part of the United States and which may lead to the award of large damages. Assuredly a

party by paying money to buy his peace and avert the danger of being called on for larger sums, does not admit the validity of a claim against him. In the instructions to the British Commissioners laid before Parliament, it is said that, "although Her Majesty's Government are of opinion that arbitration is the most appropriate mode of settlement, you are at liberty to transmit for their consideration any other proposal which may be suggested for determining and closing the question of these claims." It would seem as the only other mode likely to occur, that the British government had in view the payment of a gross sum.

It would appear, as well from the circumstances attending the northern boundary controversy, as from the slave indemnity convention, that the practical effect of arbitration, as between us and England, is only to prepare matters for direct settlement. Having had confided to me, as the representative of the United States in London, the selection of an arbitrator to whom the boundary difficulty should be referred, and which resulted, in consequence of the express instructions of my government, in the choice of the King of the Netherlands, I was induced to examine closely every subsequent proceeding connected with the matter. It will be recollected that our minister at the Hague protested, without awaiting the orders of his government, against the award, placing his objections on the fact that the King, instead of deciding which were the "highlands" of the treaty, had proposed a conventional line. Lord Palmerston immediately instructed the British Minister at Washington (February 9, 1831) to say that "His Majesty had not hesitated to acquiesce in the decision in fulfillment of the obligations which His Majesty considers himself to have contracted by the terms of the Convention of Arbitration of the 29th of September, 1827. His Majesty is persuaded that such will be the course adopted by the government of the United States." That it was unworthy of a great nation to resort to the technicality of an acute attorney, in order to avoid giving effect to a sovereign award which it had solicited, I was assured some years afterwards by Governor Tazewell, at the time Chairman of the Senate Committee of Foreign Relations, was the declaration of the then President, General Jackson, when the decision was first announced to him. In consequence, however, of the remonstrance of the Legislature of Maine, he was induced to submit the question to the Senate, accompanied with the declaration of his earnest wish that the award might be assented to. The advice of that body

against accepting the award went on the ground that the King had not decided the question before him. England finally assented to our course, and it was only by a direct negotiation, as in the other case, that, in 1842, our Northeastern boundary line was settled.

It is proper to state that, though long familiar with the original American and English "cases," the preceding remarks have been made in entire ignorance of what the American counter case may contain, and with no other knowledge of the English than has been derived from the newspapers of the day. From them, however, we learn that the "counter-case" begins by announcing that, to the American imputations of hostile motives and insincere neutrality, no reply will be offered, that England refuses to enter into a discussion of those insinuations, because it would be inconsistent with her self-respect, irrelevant to the main issue, and would tend to inflame the controversy, that no reference will be made to indirect damages. It is insisted that the only losses which the arbitrators may in any event take into account, are those arising from the capture or destruction of ships or property. This paper, as well as the original "case," is said to be the production of Lord Chancellor Hatherly.*

W. B. LAWRENCE.

* We have, since the original publication of this letter, seen the text of both the American and English "counter-cases." It may be proper, as bearing on the subject of this letter, to give the conclusion of the American paper. After refering to the claim of a belligerent to be indemnified for losses occasioned by the negligence of a neutral government, it thus proceeds:—"'Losses of which such negligence is the direct and proximate cause, (and it is in respect of such only that compensation could justly be awarded, are commonly not easy to separate from those springing from other causes.'

"The United States concur with Her Majesty's Government in the opinion that 'a claim on the part of a belligerent to be indemnified at the expense of a neutral for losses inflicted or occasioned by any of the ordinary operations of war' 'is one which involves grave considerations, and requires to be weighed with the utmost care.' Without the explanatory observations which her Majesty's Government reserves the right to make in a later stage of the proceedings, they cannot say how far they do or do not concur in the further statement that compensation can only justly be awarded by the Tribunal in respect to losses of which the negligence of the neutral is the direct and proximate cause.

"It appears to them, however, that certain general considerations may reasonably be assumed by the arbitrators. 1. Both parties contemplate that the United States will endeavor to establish in these proceedings some tangible connection of cause and effect between the injuries for which they ask compensation and the 'acts committed by the several vessels,' which the Treaty contemplates, are to be shown to be the fount of those injuries. 2. The Tribunal of Arbitration being a judicial body, invested by the parties with the functions necessary for determining the issues between them, and being now seized of the substance of the matters in dispute, will hold itself bound by such reasonable and established rules of law regarding the relations of cause and effect, as it may assume that the parties had in view when they entered into their engagement to make this reference. 3. Neither party contemplates that the Tribunal will establish or be governed by rules in this respect which will either, on the one hand, tend to release neutrals from their duty to observe a strict neutrality, or, on the other hand, will make a course of honest neutrality unduly burdensome."

Ochre Point, Newport, R. I.,
May 20, 1872.

To the Editor of the Providence Journal:

Since I addressed you a letter rendered necessary, as I conceived, by the announcement that the original American "case," including the claim for indirect damages, had, before its presentation at Geneva, been submitted to me and received my full approval, circumstances have occurred, which have caused the question with England, which then menaced a disruption of the treaty, to assume new phases.

It may be proper to mention that I never saw the resolution offered in the House of Representatives by Mr. Peters, for the waiver of the indirect claims, before the publication of my communication, though it was very satisfactory to me to find an entire coincidence between the propositions before Congress and the conclusions at which I had arrived, especially as regarded the meaning of *amicable settlement*, employed in the protocol, and as to the utter incompatability of the provisions of the treaty, for determining separately the liability as to each vessel with any claims that could be presented for indirect damages. (See Appendix.)

The admission, in the semi-official statements ascribed to the Department of State, as well as in the recent correspondence between the two governments laid before the Senate, that the United States do not and never did contemplate any pecuniary damages from indirect or national losses, might well have induced the belief that nothing remained to embarrass the future proceedings of the arbitrators. The Secretary of State would, it was thought, without strictly inquiring into the right of the House of Representatives to advise in relation to our foreign affairs, have gladly availed himself of the moral sanction afforded by the immediate representatives of the people, to escape from the international embarrassments, induced by the too zealous advocacy of our supposed interests, by those to whom the preparation of the "case" before the Geneva Tribunal had been entrusted.

Such, however, was not the view taken by our minister of foreign affairs. A negotiation was initiated, the apparent object of which was to induce England to afford us an apology, to recede from our

untenable position, without appearing to yield anything which we had previously advanced.

A point has been made in this matter, the force of which we confess ourselves wholly incapable of comprehending. Whether the claims for indirect damages, as presented in our "case,"—that is to say, for the enhanced payments of insurance, the transfer of a large part of the American commercial marine to the British flag, and the prolongation of the war,—are avowedly withdrawn, or whether they are declared by the Tribunal, by our own request, inadmissible, has ever appeared to us to present a distinction without a difference. If, indeed, there was any preference between the two propositions, it would be, for that course which, at the earliest day, would remove from notice pretensions which Americans can no longer regard with satisfaction. When we first saw the "case," we did not advise the suppression of the matter connected with the indirect claims, and which embraced in its original scope all injuries arising from what we deemed unfriendly acts of England, going back even to "the premature recognition of rebel belligerency," because we supposed that England would object to those claims going before the Tribunal, but on account of the prejudice which the presentation of untenable demands would cause to our meritorious reclamations.

The publicists of Europe have, it is true, been occupying themselves with the abstract point, to which Mr. Fish seems to have attached so much importance. Among recent writings of that kind, which have reached us within a few days, and which are understood to be the same that are alluded to in a semi-official announcement from the Department of State, are articles from the pens of two eminent continental writers, whose friendship it has long been my happiness to enjoy, and whose opinions I should be the last man to undervalue. M. Rolin Jacquemyns, however, in contending for the jurisdiction of the "Tribunal," waives the question of the validity of the indirect claims, though he leaves little doubt as to his opinion on the subject; (*Quelques mots sur la phase nouvelle du différend anglois americain.*) While M. Pradier Fodéré, in insisting that the Board should adjudicate upon them, not only declares them worthless, but maintains that if, from any cause, damages on account of them should be accorded, England will have a right to decline to fulfill the awards. (*La question de l' Alabama et le droit des gens.*

In considering the right to object to the discussion of a claim or to withdraw from the operation of an award on a matter deemed by one of the parties not within the competence of the arbiters, I would remark that we are not to confound the character of an international tribunal with a "reference" under municipal laws. In the latter case, judicial sanction may be given to the act of the parties, by making it a rule of court, and the errors of law which the referees may make are open to revision by the judges according to established forms. In the case of sovereign States, there is no tribunal but the one to which they have voluntarily subjected themselves, and if they cannot interpose as to the jurisdiction, there might be no limit to the usurpation, through ignorance or design, of arbitrators who might, in rendering their decisions, be influenced by the political relations, changed perhaps since the commencement of the reference, which their sovereigns bore to the respective parties.*

The only question which can arise in this matter is whether the interposition in a case where the subject was not in the contemplation of the protesting party, shall precede or follow the award As to the repudiation, even of an award already made, there is a precedent in the diplomatic history of the United States and Great Britain, to which we alluded in our last letter. Though the United States asserted, in the case of the northeastern boundary, that the King of the Netherlands had exceeded his authority, such was not the view of the British government, who said, as we now say, that the arbiter was the only competent judge of his jurisdiction.†

The recent correspondence transmitted to the Senate, with a proposed supplementary treaty, discloses more fully than we had

*The chapter on *Indirect claims* in the American argument enumerates several exceptions to the obligatory effect of an international award, the first of which, as given in the language of Pradier Fodere, is, where a sentence has been rendered without sufficient authority on the part of the arbitrators, or where they have made a decision outside or beyond the terms of the compromise.

There is a difference between the French law and the English Common law as to the obligation assumed by individuals in submitting matters to an arbitration. By the former, during the pendency of an arbitration, there can be no revocation, except by the unanimous consent of the parties, while by the latter, a party may withdraw at any time before the award. And though by act of Parliament, the rule in England has been changed, a revocation is still admissible by leave of a Judge. In the United States the common law has been more or less modified by the local legislation of the several States.

†Prof. Geffcken, formerly Minister of the Hanseatic Towns at Berlin and London, and now Professor of International Law in the new University of Strasbourg, has discussed under the title of *Die Alabama Frage*, the obligation of England to allow the question of indirect damages to go before the arbitrators. He refers to the refusal of the United States to be bound by the decision of the King of the Netherlands. He says that, England was right in not going before the arbitrators, if she had any idea of not being bound by their decision, or of protesting later, that the decision rendered involved a departure from the terms of the reference.

previously stated it, the analogous case before the board sitting at Washington. It was professedly decided on its merits and without reference to the question of jurisdiction, though it was clearly out of the jurisdiction of the commissioners, whether the claim was or was not excluded, directly or by implication, in the treaty. The claim was for a part of the confederate cotton debt held in England and was consequently one of contract, while the convention only applies to acts committed against persons and property.

It was moreover directly excluded by the Constitution of the United States. The commissioners placed their decision on what they conceived to be the rights of the United States, "to crush the rebel organization, and to seize all its assets and property, whether hypothecated by it or not to its creditors."* It was of course, within their judicial discretion to come to another conclusion, on this point, and for which, indeed, they might have found as pretexts the decisions of English tribunals, to which the United States were recently a party, if not judgments of our own courts. But had they done so, no construction of international rights and obligations would have justified any department of the United States government in recognizing their award: inasmuch as the fourteenth amendment of the constitution which is paramount to all treaty obligations, provides, among other things, that "neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave, but all such debts, obligations and claims shall be held illegal and void."

[Nor would this have been the first time that a treaty stipulation with us has been obliged to yield to a constitutional provision. The consular convention of 1853 with France contains an article of which the Consul at San Francisco, 1854, attempted to avail himself. The sixth amendment of the Constitution declares that

* The following is the judgment in BARRETT vs. the UNITED STATES.

"The Commission is of opinion that the United States is not liable for the payment of debts contracted by the rebel authorities.

"The rebellion was a struggle against the United States for the establishment, in a portion of the country belonging to the United States, of a new State in the family of nations; and it failed. Persons contracting with the so called Confederate States, voluntarily assumed the risk of such failure, and accepted its obligations, subject to the paramount rights of the parent State, by force, to crush the rebel organization, and seize all its assets and property, whether hypothecated by it or not to its creditors. Such belligerent right of the United States to seize and hold was not subordinate to the rights of creditors of the rebel organization, created by contract with the latter; and when such seizure was actually accomplished, it put an end to any claim to the property which the creditor otherwise might have had. We are, therefore, of opinion, that after such seizure the claimant had no interest in the property, and the claim is dismissed."

in all criminal prosecutions, "the accused shall have a right to be confronted with the witnesses against him, and to have compulsory process for obtaining witnesses in his favor."

The convention provides that "the Consul generals, consuls, vice consuls, or consular agents, as well as the consular pupils, shall never be compelled to appear as witnesses before the courts. When any declaration for judicial purposes, or deposition is to be received from them, in the administration of justice, they shall be invited, in writing, to appear in court, and if unable to do so, their testimony shall be requested, in writing, or be taken orally at their dwellings."

There was a real inherent embarrassment in this matter, arising from an apparent conflict of the convention with the amendment of the constitution as above cited, which gives to defendants in criminal prosecutions the right of compulsory process for witnesses. This was not applicable to persons then exempt. As the law of nations stood, when the constitution went into effect, ambassadors and ministers could not be served with compulsory process to appear as witnesses, and the clause in the constitution referred to did not give the defendent in criminal prosecutions the right to compel their attendance in court. But what was the case in this respect as to consuls? They had not the diplomatic privileges. After the adoption of the constitution, the defendant, in a criminal prosecution, had the right of compulsory process to bring into court, as a witness, any foreign consul whatever. This could not be taken away by treaty. (Mr. Marcy, Secretary of State, to Mr. Mason, Minister in Paris, September 11, 1854.) And in a subsequent despatch, (October 23, 1854) Mr. Marcy says that his construction is sustained by the Attorney General and all the members of the Cabinet.

After the subject had been referred to in the President's Message of December, 1854, and been discussed in repeated communications between the two governments, in which a modification of the treaty had been proposed, to adapt it to the provisions of the constitution, the matter was finally settled by the interchange of notes between Mr. Mason and Count Walewski, of the 3d and 7th of August, 1855, in accordance with a despatch of Mr. Marcy, of the 18th of January. Among other arrangements, instructions were to be sent to the French Consuls in the United States to attend and testify according to the treaty, and unless in cases of

actual inability, there was to be no refusal thereafter.—*Lawrence's Wheaton, ed.* 1863, *p.* 432.]

It would seem, therefore, that so far from the disposition which was made of the case at Washington being an argument in favor of England's allowing the indirect claims to go before the tribunal at Geneva, the facts now stated show that the government of the United States ought to have on their part done, in the former matter, what England now proposes to do as to the indirect claims,—refused to permit any action of the commissioners in the premises.*

All that has occurred since our last letter satisfies us that what we then endeavored to urge, what ex-President Woolsey and Reverdy Johnson recommended, and what it was the object of the resolution in the House of Representatives to accomplish, was the correct course, if not the only one, by which the solution of the present difficulties can be attained. The President having through his agent, presented claims, which, whether technically admissible or not, all parties agree can have no practical effect, he is the competent and suitable authority to withdraw them. I regret to find it suggested in journals, with whose opinions on public law it has

* In relation to the cotton claims, the facts as stated by Lord Granville, in his note of March 20, 1872, to General Schenck, are as follows:—

"On the 11th of November, in pursuance of the general instructions which had been given to Her Majesty's agent, a claim upon a bond issued by the so-called Confederate States for a sum forming part of a loan called the 'Cotton Loan,' contracted by those States, and for the payment of which certain cotton seized by the United States was alleged ed to have been hypothecated by the Confederate government, was filed at Washington; and on the 21st, I learnt from you that the United States government objected to claims of this kind being even presented.

"The despatches from Her Majesty's agent, giving the details of the nature of the claim, and of the demurrer made to it by the United States agent, did not reach me until the 6th of December. I had in the meantime ascertained from Sir E. Thornton, that the expression 'acts committed' had been used by mutual agreement in the negotiations which preceded the appointment of the High Commission with a view to exclude claims of this class from the consideration of the High Commissioners; those words being also used in the XIIth Article of the Treaty with regard to private claims. The question was brought before the Cabinet at its next meeting on the 11th, and was finally decided on the 14th, as recorded in a minute by Mr. Gladstone. This decision was, that the Confederate Cotton claims should not be presented unless in case of bonds exchanged for cotton, which had thereby become the actual property of the claimants, and directions were given for a despatch to be sent to this effect."

"Information reached me the next morning by telegraph of the adjudication, which Her Majesty's government had not expected to take place, upon the merits of the claim by the Commissioners. This required a reconsideration of the instructions, and fresh instructions were sent by the mail of the 23d, and also by telegraph, to Sir E. Thornton to arrange with Mr. Fish that the presentation of claims which appeared to be manifestly without the terms of the treaty should be withheld, and that when Her Majesty's agent was of opinion that a claim belonged to a class that ought not to be presented, it would be desirable that an agreement to that effect should be made and signed by Sir E. Thornton and Mr. Fish. These instructions were communicated to Mr. Fish."

ever, heretofore, been my satisfaction to concur, that the country would be degraded by withdrawing pretensions which every one now agrees were most unadvisedly presented. I am not aware that there is any difference in principle between the rules of private conduct and those which should control the action of nations. If an individual preferred a claim against another, which subsequent investigation showed him to be untenable, can any one doubt his duty to immediately withdraw it?

Not only as it seems to us would the direct withdrawal of these claims have been the course most honorable to the United States, and most agreeable to the officer charged with the administration of our foreign affairs, but it had the advantage of not requiring the co-operation of other parties at home or abroad. In thus acting, the President would have, in the exercise of his legitimate authority, not have been exposed to the risk of having his course thwarted by impediments growing out of either parliamentary or congressional controversies. In attempting to obtain from the British government some action by which we may appear "in changing front" not to make any concessions, the President has not only involved us in questions liable to be affected by the stability of the English ministry, but has rendered necessary the assent of the Senate to any measure which may be required to extricate us from the dilemma. We certainly would not advise any usurpation of the appropriate powers of that body, but neither is it advisable that the President should divest himself of the responsibility attached to his office. The new article is not only open to discussion on its merits, but, as was maintained by Mr. Webster when President Jackson submitted to the Senate the northeastern boundary award, to the objection that the action of that body is not required in conducting or carrrying into effect the proceedings before an arbiter; nor can it be doubted that the difficulties which the executive would, in any ordinary case, encounter in procuring the necessary assent of two-thirds of the Senators, have been increased by the partisan character which the negotiations have been made to assume, by the exclusion of a portion of their members from the consultations to which the President invited the foreign committees of the two Houses. For our own part, considering, as we do, that all questions connected with our foreign relations should be kept aloof from matters that divide us at home, we trust that no Senator will permit himself to be influenced in

his vote by any considerations bearing on the Presidential election. It cannot, however, escape observation that journals understood to favor the elevation of a candidate to the executive office, other than the present incumbent, are not loth to take advantage of the embarrassments of the diplomatic labyrinth, into which the Secretary of State has, in attempting to avoid a direct reversal of the previous action of the government, involved us.

And here we cannot refrain from suggesting that instead of making, for a special occasion, a new rule of international law, the inconvenience of which in future cases it is impossible to foresee, the subject should be remanded to the executive, either leaving it where the constitution places it, to his exclusive discretion, or with a recommendation similar to that embraced in the proposed resolution of the House of Representatives. Indeed, the difficulties already experienced in preparing anything acceptable to the two governments, and the objections of a contrary character raised to the *projet* by different parties, would indicate a simple withdrawal of the obnoxious claims.

No stipulation of a permanent character can well be made with reference to the *indirect losses*, which, in the discussions connected with the Alabama claims, have been frequently referred to as synonymous with *national losses*, without first establishing a more accurate definition of such claims than any recognized rule of interpretation now furnishes. The national expenditures in pursuit of the confederate cruisers were, of course, incurred by the United States, and cannot be enumerated among individual losses, yet they are classed by us among the direct claims, nor are they enumerated in the British protest against *indirect claims* as being inadmissible. It is, indeed, said in the counter case, "it would be plainly unreasonable to contend that if a failure of duty could be established against Great Britain, in respect to a given vessel, all that has been expended by the United States in trying to capture her must be assumed to be chargeable against this country. But the British government takes exceptions to this class of claims altogether. It cannot be admitted that they are properly to be taken into account by the arbitrators, or that Great Britain can be fairly charged, at once with the losses which a belligerent cruiser has inflicted during her whole career, and with what the United States may think fit to allege that they vainly spent in endeavoring to capture that cruiser." So far as regards the present contro-

versy, the recital, in the proposed supplementary treaty, of the indirect claims for the "*national losses*" which are specifically mentioned, viz: those sustained in the transfer of the American commercial marine to the British flag, the enhanced payment of insurance and the prolongation of the war, (the national expenditures in pursuit of the confederate cruisers not being named,) may be sufficiently exact to show what *indirect losses*, claimed by us, are to be excluded from the action of the tribunal of arbitrators, but it will not close the doors against future difficulties.*

It may well be a question with us whether by now accepting the compensation which we claim for our expenses in pursuing the Alabama and other similar vessels, we are willing to establish a precedent which, under the plea of the escape of a cruiser of the other belligerent from any point of our extensive sea coast, might make us responsible for the maintenance, during any war in which England might be engaged, of her entire navy alleged to have been sent in pursuit of her. It is to be remembered that for the ninety years which have elapsed since the recognition of our independence, we have been neutral for more than eighty, and that our policy ever has been, the recognition of neutral rights, wherever they came in collision with belligerent pretensions.

On the other hand, ought not the provision, as to indirect losses, if the treaty is to be made permanent, be applicable to all indirect cases of national losses, that may arise from acts on land as well as at sea. The terms of the treaty are in substance that the President of the United States adopts, for the future, the construction given by the British government to the claims which we agree to abandon so far as to declare that it will hereafter guide the conduct of the government of the United States; and "the two governments are therefore agreed in this respect." The commission under the treaty of Washington for liquidating the claims of each party against the other, not included in the provisions for the Alabama claims, is confined to such cases as arose before the 9th of April, 1865, and consequently the Fenian claims are excluded. Should they be hereafter brought forward as reclamations against the United States, would the proposed rule, which applies in terms to the acts committed by particular vessels, by reason of the want of due diligence imputed to Great Britain in the performance of

* We have elsewhere had occasion to call attention to the fact that Lord Granville declined to admit that the claim for the national expenditures in pursuit of the Confederate cruisers would not have been excluded by the supplementary article as modified by the Senate.—See Introduction.

neutral obligations, be applicable to the demands against our government on account of the invasion of Canada.?

In the protocol of the 4th of May, 1871, "the British High Commissioners said that they would not urge further that the settlement of these claims (claims of the people of Canada for injuries suffered from the Fenian raids,) should be included in *the present treaty*, and that they had less difficulty in doing so, as a portion of the claims were of a *constructive* and *inferential* character."

In alluding to the *mal-entendu* between the two countries, it is only just, as an evidence of the good faith of England, to notice the recent action of the home government in proffering to the Dominion, as a consideration for her assent to those articles of the treaty of Washington which required the ratification of the Canadian Parliament, and as an indemnity for the Fenian claims, a guarantee for a loan to construct a railroad to the Pacific. I may, also, remark, in this connection, that it is clearly inferable from the recent speech of the Canadian Premier, (Sir John Macdonald) himself one of the late High Commissioners, that Great Britain no longer regards those claims to be of a character to be asserted by her against the United States, and that the Dominion deems herself amply compensated by the action of the mother country as to the loan in question. The objections to the fishery articles, it may be added, do not come from the maritime provinces, but from those of the interior, who wished to use the fisheries as a lever for the introduction of their cereals and other agricultural products into the United States, free of duty.

In the English counter case, there is an examination by the experts, named by the Board of Trade and Commissioners of the Admiralty to whom the subject was referred by the British government, of the extent of the direct claims, according to the *data* furnished by the United States. According to the estimate made by the committee appointed by the Board of Trade, the total amount claimed for *private losses* is reduced from $17,763,010 to $8,039,685, and by the Report to the Admiralty all the expenditures incurred in the pursuit of the confederate vessels as claimed in the United States case, from $7,080,478 70 to $1,509,300, for the pursuit of the vessels recognised as connected with Alabama class. Though the British Government deny that any claim can be preferred to the Geneva Tribunal, for expenses incurred in fitting out vessels to cruise in pursuit of the Alabama and other Confed-

ers, the committee appointed by the Admiralty, dis-
etween the expenditures incurred in the actual pur-
ose vessels and the expenditures for them when em-
he ordinary duties of a military marine. The last sum
s the largest amount for which England can in any
able. As it is shown that, in most cases of private
re insurance was effected, the claim is presented both
inal owner and the companies, while, in many instances,
travagant demands are made for prospective profits it
n that a compromise, which would avoid all further
ns at Geneva, might, as in former cases, after the indi-
cease to be a subject of controversy, be possible.

close this communication without remarking that in
ons growing out of the existing imbroglio with Eng-
undue responsibility is imputed to our agent for what
deemed the exceptional matter of the original case. The
nction of the two eminent ex-attorney generals, now
counsel to our agency at Geneva, was published to the
before the questions now pending were brought to no-
as it is well understood that, at all events, one of these
was consulted during the whole progress of the work,
ed that nothing not approved by him was inserted in
case. The Secretary of State may, also, well offer as
for any official countenance that he may have given to
the high authority of Mr. Cushing and Mr. Evarts.

W. B. LAWRENCE.