

OPINIONS OF THE PRESS ON THE GENEVA ARBITRATION.

FROM THE AMERICAN PRESS.

A correspondent of the *Boston Advertiser* thus discusses the merit of the American claim for indirect damages:

"But the present is by no means one of those crucial tests of subjecting popular commotion to sober reason and simple justice, like the case alluded to and others which will suggest themselves—this is, in fact, a mere question of taste—in the form of presenting our claim for adjustment before the arbitrators. The difficulty has probably arisen by the case being drawn up at the State department, and without the opportunity to consult our counsel. For we cannot suppose there could be any more than one opinion among lawyers, as to the propriety of interposing a specific claim for the expenses of the war by way of consequential damages. There is not a respectable common-law lawyer in England or America who could entertain any more than one opinion upon that point. Damages of that character are so remote and of so conjectural a character, that no judge would for a moment listen to any such claim. It is of the same character as a bankrupt's claim for all the losses consequent upon his failure, because some of his debtors did not pay promptly a debt of \$200. The point is one too obvious to admit of argument in the mind of an experienced lawyer. We venture to affirm that no one of our counsel would risk his reputation by asserting in the presence of Lord Chief Justice Cockburn, the English arbitrator, that he expected any such claim for consequential damages to be allowed. It would be equivalent to affirming a direct falsehood, since no such lawyer possibly could expect any such thing. In fact, if we could suppose any such absurdity as that the arbitrators should allow any such claim, it would render the award void on the face of it to that extent, inasmuch as it would show a clear mistake of law in the award."

In spite of this strong expression of opinion, however, the writer says that the case cannot be withdrawn because people would not appreciate the reasons for the withdrawal; and he recommends that it be left to the Conference, which will make a short work of the claims. We give below two articles from influential journals:

THE DANGERS OF THE TREATY.—It is useless to conceal the fact that the high hopes that were entertained of the Treaty of Washington are likely to be frustrated. The danger of its abrogation is much greater than is supposed. Seeds of bitterness have been already developed most unexpectedly, in place of the amicable relations which it was hoped would be permanently established. The Court of Arbitration at Geneva was an experiment which promised to abolish wars among civilized nations by demonstrating the superiority of law and reason over national passions and prejudices. That anything should have occurred to frustrate these anticipations of human progress, is, to say the least equally discouraging and mortifying.

The position appears to be placed as follows: An unfortunate combination of events has placed the Governments of Great Britain and the United States in a false position, for which it is all but impossible for either to recede. The United States authorities have preferred vast claims before the

Geneva Court of Arbitration without any hope or idea that they would be allowed. On the other hand, the English Government affirms that these claims are untenable, preposterous, and absurd, and has no notion that they will be recognized, yet it refuses to permit the court to pass on them. The only possible way out of the difficulty short of an open repudiation of the whole Treaty, is for both governments to accept the situation; argue their respective cases, pro and con, before the arbitrators and then await the result. But this appears to be almost equally impossible to both countries. The United States government cannot now recede from the claims which it has advanced, nor can the English Government go into court to contest a point which it utterly refuses to recognize or admit.

The whole case turns upon the point as to whether there was any understanding by either of the contracting parties, expressed or implied at the time of the formation of the Treaty, that the American claims for indirect damages were to be submitted to the jurisdiction of the Court of Arbitration. The English Government insists that there were not, and that the only claims to be submitted to the Court were for the actual depredations committed by the Alabama and other Anglo-Confederate cruisers.

Now, it may be fairly admitted that this was the view of the majority of the American press and people during the negotiations, and that there was no general expectation that any other claims would be admitted or allowed. Both Senator Sumner and General Butler based their opposition to the Treaty on the express grounds that it did not cover the claims for indirect damages. But the letter of the Treaty was silent on the subject, but curiously enough it seems to admit the very wide interpretation attached to it by the United States authorities as covering both direct, indirect or consequential damages. The English Government virtually charges that this was a breach of good faith, and virtually refuses to permit any other than the question of direct or positive damages to be decided by the Court of Arbitration.

The question at issue is of the highest importance. The difference between direct and indirect damages may be illustrated as follows: Claims, for say a basket of broken eggs at so much a dozen, would be direct damages; but payment not only for the eggs but also for the chickens that might have been hatched out of them, would be indirect damages. In the case of the Alabama claims, payment for both direct and indirect damages were claimed by the United States Government. The direct damages are estimated at \$26,000,000. The indirect damages include the actual Alabama depredations, and also two years expenses of the war said to have been prolonged for that period by the unfriendly conduct of Great Britain, and the general losses to American commerce by the transfer of American vessels to British owners. Now, the English Government have this important point in their favor. Claims for indirect or consequential damages are never admitted in ordinary courts of law and equity, and it may be argued that it is impossible to engraft on international law a principle that is clearly and absolutely inadmissible in the ordinary relations of human life.

Our government probably did a smart rather than a wise thing, in preferring claims which it knew could not possibly be recognized. But it is to be remembered that it was bound to make the best possible case, and to include everything that was not posi-

tively prohibited by the Treaty. It did not pass or adjudicate on the claims preferred. It simply presented them and left their adjudication to the Geneva Arbitrators. The mistake, and perhaps the passion of the English people and government, seem to arise from a failure to comprehend the exact functions of the Government in this matter. If the English Government would regard the American presentation of the claims for indirect as well as direct damages from its proper light, not as a judicial statement, but only as the act of a lawyer bound to make the best possible case for his client, it would still be possible to arrive at a harmonious conclusion, compatible with the honor and interests of both countries.—*U. S. Economist*.

Whatever Mr. Gladstone may say, he is accustomed to act with moderation and courage. Precisely in proportion to the magnitude of the moral achievement represented by the treaty would be the humiliation of retreating from it at the very entrance upon a fulfillment of its provisions. Efforts at a peaceful solution of international difficulties would for a long time to come be regarded without hope, and would either not be entered upon at all, or at least would be prosecuted without spirit. We do not speak of the possible horrors of a war between the two leading commercial nations of the world, which would be contingent upon the refusal to abide by the terms of a treaty so carefully drawn and so cordially accepted. Surely a man of Mr. Gladstone's temperament and convictions will not open the door to such a chamber of calamities if he can help it.

The course to be pursued by the United States seems, in its general outline at least to be tolerably clear. We have to be reasonable and to be sure that we do not lose our temper. There is only one point to be remarked upon in this respect. It has been repeated in several quarters that of course we shall not recede from the statement of our case as already presented. It is hardly reasonable to assert this as a foregone conclusion before the note of Lord Granville upon the subject has even been received. If our case has been rightly presented, in precisely such shape as it ought to take, so that in justice to ourselves we cannot modify it, then it is certain, and a matter which may be assumed as of course, that it will stand unaltered. It is not well, however, to assume the impossibility, of the existence of a mistake. The danger is that the people may assume, that for the mere reason that we have presented our case, it is therefore a matter of honor with us not to alter it, especially in the face of British threats and bluster. Threats certainly are no cause for amending it; but if it is erroneous in any respect that fact will be ample cause for correction. Our honor simply holds us to do what is intrinsically right. To hold otherwise would be to set up that artificial and ridiculous code of honour which prevails among school-boys, and which used to distinguish the age of duelling. There is little danger of a repudiation of the treaty by England if we temperately discuss any objections which she sees fit to prefer against our case, with the open and frank expression of our willingness to correct any mistakes which it may be proved we have fallen into. We admit no mistake, but we may certainly admit the possibility of one, and consent to further conference on that point. Approach the matter thus candidly and firmly, we are sure to maintain the honorable position our Government and people now hold in this most grave discussion.—*Boston Advertiser*.