I venture to express the belief that the ground, which has been taken here is not the ground that will be sustained by the English Government, and that, my friend, the British Agent will receive from Her Majesty's Ministers the same instructions that I shall certainly receive from the President of the United States, viz., that at the time when the Treaty of Washington was negotiated no one dreamed that such claims as I have been referring to would be made, and that neither Government can afford to insist upon or submit to any thing of the kind, because it is contrary to the policy of the British Empire, and contrary to the spirit of civilization. If the language were at all equivocal these considerations would be decisive, but with the express limits to your authority laid down they hardly need to be asserted.

The next question is whether the motion that has been made should be decided by you at the present stage in your proceedings. We have brought it before you at the earliest convenient opportunity.

The case of the British Government was not orally opened, and in our pleadings, we had interposed a denial of the existence of any such jurisdiction. If the matter had been discussed in an opening we might have replied to it, but as it was we could not. The case proceeded with the introduction of evidence:—Now if the evidence offered in support of these claims could have been objected to, we should have interposed the objection, that such evidence was inadmissible; but we could not do that, and why? Because the Treaty expressly requires the Commission to receive such evidence as either Government may choose to lay before it: to avoid the manifold inconvenience likely to result from discussing the admissibility of evidence, it was stipulated and we have allowed —I suppose with the approbation of the Commissioners—every piece of evidence to come in without objection. We conceived that we were under obligation to do so. We could not bring the question up earlier, and we bring it up now, just before our case commences, and say, that we ought to have it now decided—first, as a matter of great convenience, because the course of our evidence will be affected by your decision. There is much evidence, which we shall be obliged to introduce, if we are to be called upon to waive the comparative advantages of mutual traffic, that would otherwise be dispensed with, and that we think, ought to be dispensed with. Moreover, we maintain that we are entitled to have your decision now on grounds of precedent. A precisely similar question arose before the Geneva Arbitration. The United States made a claim for indirect or consequential damages. That claim appeared in the case of the United States, and its evidence which were filed on the 15th of December. The British case was filed at the same time, and on the 15th of the next April Lord Tenterden addressed this note to the Arbitrators:

Geneva, April 15, 1872.

The Undersigned, Agent of Her Britannic Majesty, is instructed by Her Majesty's Goverment to state to Count Sclopis, that, while presenting their Counter-Case, under the special reservation hereinafter mentioned, in reply to the Case which has been presented on the part of the United States, they find it incumbent upon them to inform the Arbitrators 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 to the claims for indirect losses put forward by the Government of the United States, under the several heads of—(1.) "The losses in the transfer of the American commercial marine to the British flag." (2.) "The enhanced payments of insurance." (3.) "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 by Her Majesty's Government to be within either the scope or the intention of the reference to arbitration.

Her Majesty's Government have been for some time past, and still are, in correspondence with the Government of the United States upon this subject; and, as this correspondence has not been brought to a final issue, Her Majesty's Government being desirous (if possible) of proceeding with the reference as to the claims for direct losses, have thought it proper in the meantime to present to the Arbitrators their Counter-Case (which is strictly confined to the claims for direct losses), in the hope that, before the time limited by the 5th Article of the Treaty, this unfortunate misunderstanding may be removed.

But Her Majesty's Government desire to intimate, and do hereby expressly and formally intimate and notify to the Arbitrators, that this Counter-Case is presented without prejudice to the position assumed by Her Majesty's Government in the correspondence to which reference has been made, and under the express reservation of all Her Majesty's rights, in the event of a difference continuing to exist between the High Contracting Parties as to the scope and intention of the reference to arbitration.

If circumstances should render it necessary for Her Majesty to cause any further communication to be addressed to the Arbitrators upon this subject, Her Majesty will direct that communication to be made at or before the time limited by the 5th Article of the Treaty.

The Undersigned, &c. (Signed) TENTERDEN.

Thereupon, after some further fruitless negotiations, the arbitrators, of their own motion, proceeded to decide and declare that the indirect claims made by the United States were not within the scope of the arbitration, thus removing all misunderstanding by a decision eliminating immaterial matters from the controversy. The decision was made and put on record exactly in the method which we ask you to pursue here. We say that we are entitled to have such a decision on the ground of precedent as well as of convenience; and we say further that we are entitled to have it on the ground of simple justice. No tribunal has ever been known to refuse to declare what, in its judgment, was the extent of its jurisdiction. To do so, and receive evidence applicable to the subject as to which its jurisdiction is controverted, and then to make a general decision, the result of which renders it impossible ever to ascertain whether the tribunal acted upon the assumption that it had or had not jurisdiction over the controverted part of the case, would be the extremity of injustice.

If an award were to be made under such circumstances, nobody ever would know whether it embraced the matter respecting which jurisdiction was denied or not. In illustration I may mention the Geneva Arbitration. Suppose that it had gone forward without any declaration by the Arbitrators that they excluded the indirect losses, and then suppose that a round sum had been awarded, would not Great Britain have had a right to assume that this round sum included the indirect claims to which it never meant to submit. So will it be here; unless there is placed upon record the ruling of the Commissioners as to this point, it never will be possible for us to know, or for the world to know, upon what ground you have proceeded;—whether you believe that we are to pay for commercial intercourse or not. No one will know how this is unless upon our motion you decide one way or the other. For our assistance then in conducting the case—for convenience and for the information of our respective Governments, we ask you to make this decision, and it is entirely obvious that if no decision is made it must necessarily be assumed that these controverted claims are by you deemed to be a just ground of award. We never can know the contrary, unless you say so; and if you are to say so, we think that convenience and justice both require that you should say so, at such an early day as to enable us to shape the conduct of our case in conformity with your decision.