

the several vessels," it is agreed that the said claims shall be referred to arbitration, and article 7 provides, that "the said tribunal shall first determine as to each vessel separately," whether Great Britain has failed to fulfill her duty. In case the tribunal find that Great Britain has so failed, it may award a sum in gross for all the claims. Article 10 provides that in case of the omission of the tribunal to follow up its decision by such award, then a board of assessors "shall be appointed, to 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."

The meaning of articles 7 and 10, taken together, is that, if the arbitrators find the alleged default to have been committed, they may award a sum in gross, on account of the liability, for all the vessels; and, if they fail to do so, the assessors are to ascertain the liability as to each vessel. Evidently it was considered that the assessors should not be intrusted with the large discretionary power vested in the arbitrators to lump all the damages together. But the *damages to be ascertained are the same in both cases*—the arbitrators may lump them: the assessors must separate them—that is all the difference.

And now the question arises whether, in ascertaining the amount to be paid on account of the failure as to any particular vessel, the indirect injury by "the transfer of a large part of the American commercial marine to the British flag," &c., &c., could be apportioned and computed by the assessors, and put down to the account of that vessel. Clearly not; and therefore, by the terms of the treaty itself, the claims in question are inadmissible.

It may be said that the British commissioners should have had the treaty made plainer and clearer than it is. On the whole it appears, however, to be as satisfactory a bargain as could reasonably be expected.