

a contract with these various States, as a neutral Power, to use due diligence in certain emergencies, not one even of the smallest of them would fail to deny that Her Majesty's Government was the exclusive judge of the measure of its obligations, contracted under those words. What is, then, the rule by which the actual performance of this duty can be estimated? It seems to me tolerably plain. Whatever may be the relative position of nations the obligation between them rests upon the basis of exact and complete reciprocity.

Hence the compact embraced in the words 'due diligence' must be fulfilled according to the construction placed upon the terms by each separate nation, subject to reasonable modifications by the just representations of any other nation with which it is in amity, suffering injury from the consequences of a mistake of negligence or intention. These may very naturally grow out of the great difference in their relative position, which should properly be taken into consideration. In the struggle which took place in America 'due diligence' in regard to the commercial interests of one of the belligerents meant a very different thing from the same words applied to the other. The only safe standard is that which may be reached by considering what a nation would consider its right to demand of another were their relative positions precisely reversed. If the due diligence actually exercised by one nation towards another does not prove to be exactly that diligence which would be satisfactory if applied to itself under parallel circumstances, then the obligation implied by the words has not been properly fulfilled, and reparation to the party injured is no more than an act of common justice. Such seems to be the precise character of the present controversy. Her Majesty's Government denies that the measure of diligence due by her as a neutral to the United States as a belligerent during the late struggle was so great under the law of nations as it has been, with her consent, made by the terms of the Treaty. But, in either case, she claims to be the exclusive judge of her fulfilment of it, apart from the establishment of this Tribunal, to which she has consented to appeal. But this very act implies the consciousness of the possibility of some debt contracted in the process by the use of these terms that may justly be claimed by another party. Of the nature and extent of that debt, and how far actually paid, it is the province of this Tribunal to determine after full consideration of the evidence submitted. Such is the construction I have placed upon the words 'due diligence.'"

Mr. le Vicomte d'ITAJUBA :—

"La question spéciale, soumise à la décision du Tribunal d'Arbitrage, a pour but de déterminer l'étendue que l'on peut accorder à l'effet de la commission dont un navire de guerre se trouve pourvu—si cet effet est le même pour un navire construit en observation des lois de la neutralité que pour un navire construit en violation de ces lois, c'est-à-dire si, par le fait de posséder une commission, un navire, construit en violation des lois d'un Etat neutre, a le droit d'exiger de