

means to owe. In French it becomes '*devoir*,' which is equivalent to debt, to duty, or to obligation. In English it is thus defined by two eminent authorities :—Richardson.—'That which is owed ; which any one ought to have ; has a right to demand, claim, or possess.' Webster.—'Owed, that ought to be paid or done to another. That is due from me to another, which contract, justice, or propriety requires me to pay, and which he may justly claim as his right.' I have searched a great variety of other authorities, but do not cite them, as they only repeat the same idea. Hence it may be inferred that the sense of the words 'due diligence' is that of 'earnest labour owed to some other party,' which that party may claim as its right. But, if this definition be conceded, it must naturally follow that the nature and extent of this obligation cannot be measured exclusively by the judgment or pleasure of the party subject to it. If it could, in the ordinary transactions between individuals, there would be little security for the faithful performance of obligations. If it were not that the party, to whom the obligation has been given, retains a right to claim it in the sense that he understands it, his prospect of obtaining justice in a contested case would be but slight. If this view of the meaning of the words be the correct one, it follows that when a neutral Government is bound, as in the first and third Rule laid down in the Treaty for our guidance, to use 'due diligence' in regard to certain things, it incurs an obligation to some external party, the nature and extent of which it is not competent to it to measure exclusively by its own will and pleasure. Yet the assumption that it is competent appears to me to underlie the whole extent of the British position in this controversy. It may, indeed, be affirmed that no Sovereign Power in the last resort is accountable to any other for the results of the exercise of its own judgment arrived at in good faith. This proposition may be admitted to be true in point of fact, but it is obvious that proceedings under it gain no sanction under any law but that of superiority in physical force. To escape this alternative resort has been had to an attempt at definition of a system of rights and obligations, to which the assent of civilized nations imparts authority in the regulation of their reciprocal duties. Under that system all the nations recognizing it are placed on a perfectly equal footing, no matter what the nature of their relative force. To borrow a sentence from the British Counter-Case :—

" 'Her Majesty's Government knows of no distinction between more dignified and less dignified Powers ; it regards all Sovereign States as enjoying equal rights and equally subject to all ordinary International obligations ; and it is firmly persuaded that there is no State in Europe or America which would be willing to claim or accept any immunity in this respect on the ground of its inferiority to others in extent, military force, or population.'

" Admitting this position in its fullest extent, it may, at the same time, be affirmed that, if Her Majesty's Government were to enter into